

## High Court: Fair Trial Trumps Efficiency

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While sympathetic with the heavy caseloads borne by family courts statewide, the California Supreme Court on Monday nonetheless voided a controversial Contra Costa County rule aimed at streamlining court proceedings.

"That a procedure is efficient and moves cases through the system is admirable," Chief Justice Ronald George wrote for a unanimous panel, "but even more important is for the courts to provide fair and accessible justice."

George recommended in a footnote that the state's Judicial Council establish a task force to investigate how to help family courts run more efficiently while maintaining access to justice for their litigants, most of whom are *pro per*.

At issue in Monday's opinion was the Contra Costa County Superior Court's Local Rule 12.5(b)(3), which was adopted in 2005 to reduce delay and minimize conflict between opposing parties in family court. It authorizes judges to reject documents not made available five calendar days before a hearing, and requires all exhibits to be enclosed in binders with explanatory declarations attached.

Most troubling to critics, though, was the requirement that limited testimony to written declarations, while allowing the trial judge discretion to take direct oral testimony only in unusual cases.

Jeffrey Elkins, representing himself, challenged the rule in 2005 after Superior Court Judge Barry Baskin invoked it to reject all but two of the 36 exhibits Elkins wanted to present during a divorce proceeding with his wife Marilyn. He argued that by severely limiting his documentation and simultaneously not letting him testify, the judge gave him no way to defend his position in a dispute over property division.

Elkins, a self-employed consultant who used to be the chief executive officer of Danville's CalTech International Telecom Corp., sought review with the First District Court of Appeal. He argued the Contra Costa rule established a system of "trial by declaration" that violated his constitutional due process rights, and placed an "unreasonable burden" on litigants. His writ petition was summarily denied.

In Monday's ruling, the high court sidestepped Elkins' due process arguments. Instead, the justices found that Contra Costa's rule violates state statutes that regard written declarations as hearsay that can't be admitted as evidence in contested trials. Testimony is crucial in divorce cases, the

court held, because it gives the judge the chance to determine credibility.

"Ordinarily, parties have the right to testify in their own behalf," George wrote, "and a party's opportunity to call witnesses to testify and to proffer admissible evidence is central to having his or her day in court."

Contra Costa amended the rule earlier this year to permit testimony in addition to, but not in lieu of, declarations. But George said that still fell afoul of state statutes.

The chief justice also noted that several *amici curiae* — including the Northern and Southern California chapters of the American Academy of Matrimonial Lawyers — had sided with Jeffrey Elkins. In addition, he pointed out, a survey of family law practitioners in Contra Costa found most "decidedly critical" of the local rule.

George took a shot at the trial court judge too, accusing him of "prejudicing" Elkins by applying the rule "in a mechanical fashion" without considering "alternative measures."

In a concurring opinion, Justice Kathryn Mickle Werdegard came to Baskin's defense by noting he was only following the rules of his court. "In my view," she wrote, "the trial court's rule and order, rather than the particular actions of the court in this case, are to blame for the exclusion of [Elkins'] evidence."

Oakland solo practitioner Garrett Dailey, who represented Jeffrey Elkins on appeal, said the ruling upholds the principle that "the rules of evidence, including the right to offer direct testimony, must be preserved."

He said the ruling sends the case back for further proceedings on property division.

Oakland lawyer Jon Eisenberg, a partner at Eisenberg and Hancock who represented the Contra Costa court, called the ruling "a meticulous opinion on the narrow hearsay issue and the broader policy issues."

"It sends the superior court back to the drawing board with clear directions," he added.

The ruling is *Elkins v. Superior Court (Elkins)*, 07 C.D.O.S. 9285.

## **Justices Reject Local Rule Aimed at Expediting Family Law Trials**

by **Kenneth Ofgang, Staff Writer © 8/7/07, Metropolitan News-Enterprise**

Contra Costa Superior Court rules aimed at expediting family law trials are contrary to state law and unenforceable, the California Supreme Court ruled yesterday.

"[W]e reach this conclusion because, pursuant to state law, marital dissolution trials proceed under the same general rules of procedure that govern other civil trials," Chief Justice Ronald M. George wrote for the court.

The rules and standard pretrial order struck down by the court—which have been recently superseded in part by new rules—made declarations admissible at trial in place of direct examination, which was not permitted in the absence of "unusual circumstances," and required the parties to establish in their pretrial declarations the admissibility of all exhibits they sought to introduce at trial.

The rules were challenged by Jeffrey Elkins, a self-represented litigant in a divorce proceeding in which his wife had counsel, after nearly all of his exhibits were excluded as sanctions for failing to comply with the court's requirements. The state Supreme Court agreed to hear the case after the Court of Appeal summarily denied his writ petition.

#### Sympathy for Court

While expressing sympathy for the court's efforts to deal with the high volume of family law cases, George said the appellate courts will not hesitate to strike down local rules where "a local court has advanced the goals of efficiency and conservation of judicial resources by adopting procedures that deviated from those established by statute, thereby impairing the countervailing interests of litigants as well as the interest of the public in being afforded access to justice, resolution of a controversy on the merits, and a fair proceeding."

The Contra Costa procedures, the chief justice said, are contrary to the Evidence Code provisions governing hearsay and setting forth procedures to be followed prior to trial.

George distinguished cases allowing procedures similar to those challenged with regard to family law motions. Where the resolution of contested issues of fact will result in a judgment, the chief justice emphasized, the rules of family law are no different from those applicable to other civil matters.

"Courts must earn the public trust," he wrote. "...We fear that respondent's rule and order had the opposite effect despite the court's best intentions."

In a footnote, George suggested that the Judicial Council establish a task force to study how to balance the need for efficiency in family law courts with the need for fairness to litigants.

#### Concurring Opinion

The opinion was signed by all members of the court except Justice Kathryn M. Werdegarr, who wrote in a concurring opinion that the majority, while reaching the correct result, was unnecessarily wandering into issues of policy best addressed by the Judicial Council or the

Legislature.

Amicus briefs criticizing the rules were submitted by a number of family law and local bar groups, including the Los Angeles County Bar Association and its family law section, as well as retired Court of Appeal Justices Donald King and Sheila Prell Sonenshine and retired Los Angeles Superior Court Judge Richard Denner.

The case is *Elkins v. Superior Court (Elkins)*, 07 S.O.S. 4910.

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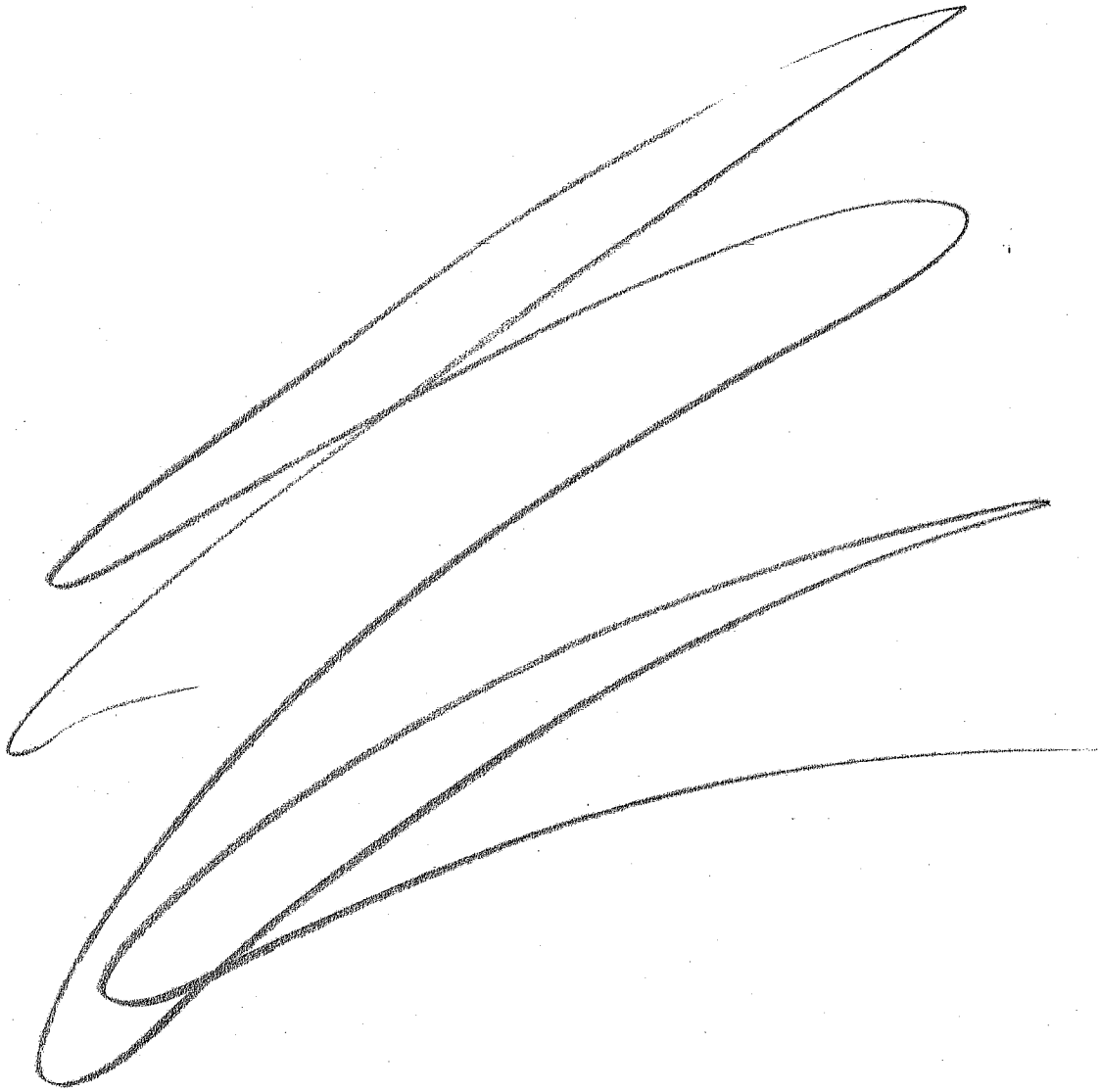
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**Click. ELKINS FAMILY LAW TASK FORCE  
APPOINTED BY SUPREME COURT OF CALIFORNIA.**

Click. (Metropolitan) Court of Appeals Justice Laurie Zelon to lead Elkins Family Law Task Force.

**Click. THE CALIFORNIA SUPREME COURT  
CONFRONTS  
CONTRA COSTA COUNTY JUDGES ABOUT THEIR  
LOCAL RULE THAT DEPRIVES FAMILY LAW  
LITIGANTS OF A FAIR TRIAL**

by Kathryn Joanne Dixon



**EXHIBIT D**

11/11/11

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◆ Elkins v. Superior Court, 41 Cal. 4th 1337 (Copy w/ Cite)

Pages: 24

JEFFREY ELKINS, Petitioner, v. THE SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent; MARILYN ELKINS, Real Party in Interest.

S139073

SUPREME COURT OF CALIFORNIA

41 Cal. 4th 1337; 163 P.3d 160; 63 Cal. Rptr. 3d 483; 2007 Cal. LEXIS 8214

August 6, 2007, Filed

**PRIOR-HISTORY:**

Court of Appeal of California, First Appellate District, Division One, No. A111923. Superior Court of Contra Costa County, No. MSD01-05226, Barry Baskin, Judge. Elkins (Jeffrey) v. S.C. (Elkins), 2007 Cal. LEXIS 5697 (Cal., May 15, 2007)

**COUNSEL:** Garrett C. Dailey for Petitioner.

Law Offices of Marjorie G. Fuller, Marjorie G. Fuller and Shara Beral Witkin for Southern California Chapter of the American Academy of Matrimonial Lawyers, Northern California Chapter of the American Academy of Matrimonial Lawyers, Los Angeles County Bar Association, Los Angeles County Bar Association Family Law Section, Orange County Bar Association, Honorable Donald B. King, Honorable Sheila Prell Sonenshine, Honorable J.E.T. Rutter and Honorable Richard Denner as Amici Curiae on behalf of Petitioner.

Horvitz & Levy, David S. Ettinger; Eisenberg and Hancock and Jon B. Eisenberg for Respondent.

Fancher & Wickland, Paige Leslie Wickland; Harkins & Sargent and Daniel S. Harkins for Real Party in Interest.

Fox and Bank, Ronald S. Granberg, Dawn Gray, Linda Seinturier, Kathryn Fox, Brigeda D. Bank; and Stephen Temko for Association of Certified Family Law Specialists as Amicus Curiae upon the request of the Supreme Court.

Lee C. Pearce for the Family Law Section of the Contra Costa County Bar Association as Amicus Curiae upon the request of the Supreme Court.

**JUDGES:** George, C. J., with Kennard, Baxter, Chin, Moreno, and Corrigan, JJ., concurring. Concurring opinion by Werdegar, J.

**OPINION BY:** George

Ex D

## OPINION

**GEORGE, C. J.**—Petitioner Jeffrey Elkins represented himself during a trial conducted in marital dissolution proceedings instituted by his wife, Marilyn Elkins (real party in interest), in the Contra Costa Superior Court. A local superior court rule and a trial scheduling order in the family law court provided that in dissolution trials, parties must present their cases by means of written declarations. The testimony of witnesses under direct examination was not allowed except in "unusual circumstances," although upon request parties were permitted to cross-examine declarants. In addition, parties were required to establish in their pretrial declarations the admissibility of all exhibits they sought to introduce at trial.

Petitioner's pretrial declaration apparently failed to establish the evidentiary foundation for all but two of his exhibits. Accordingly, the court excluded the 34 remaining exhibits. Without the exhibits, and without the ability through oral testimony to present his case or establish a foundation for his exhibits, petitioner rested his case. As the court observed, the trial proceeded "quasi by default," and the court's disposition of the parties' property claims demonstrated that the court divided the marital property substantially in the manner requested by petitioner's former spouse.

Petitioner challenges the local court rule and trial scheduling order on the grounds that they are inconsistent with the guarantee of due process of law, and that they conflict with various provisions of the Evidence Code and the Code of Civil Procedure. Respondent court counters that the promulgation of the rule and order comes within its power to govern the proceedings before it, and that its rule and order are consistent with constitutional and statutory provisions.

We need not reach petitioner's constitutional claim because, as applied to contested marital dissolution trials, the rule and order are inconsistent with various statutory provisions.<sup>1</sup> As we explain below, we reach this conclusion because, pursuant to state law, marital dissolution trials proceed under the same general rules of procedure that govern other civil trials. Written testimony in the form of a declaration constitutes hearsay and is subject to statutory provisions governing the introduction of such evidence. Our interpretation of the hearsay rule is consistent with various statutes affording litigants a "day in court," including the opportunity to present all relevant, competent evidence on material issues, ordinarily through the oral testimony of witnesses testifying in the presence of the trier of fact.

## FOOTNOTES

<sup>1</sup> Our conclusion does not affect hearings on motions.

Although we are sympathetic to the need of trial courts to process the heavy caseload of dissolution matters in a timely manner, a fair and full adjudication on the merits is at least as important in family law trials as in other civil matters, in light of the importance of the issues presented such as the custody and well-being of children and the disposition of a family's entire net worth. Although respondent court evidently sought to improve the administration of justice by adopting and enforcing its rule and order, in doing so it improperly deviated from state law.

Subsequent to the trial (and our grant of review) in the present case, respondent incorporated much of its trial scheduling order into regularly adopted and published local rules of court. As of January 1, 2007, respondent's local rules were amended to provide that although declarations still are required from each witness in a dissolution trial, litigants have the option of calling witnesses for direct examination *in addition to* filing declarations.<sup>2</sup> This amendment does not render petitioner's case moot, because the prior rule and order were enforced against petitioner. In addition, the amended rules still require the admission into evidence of hearsay declarations, a practice inconsistent with the Evidence Code.

## FOOTNOTES

<sup>2</sup> The local rule effective January 1, 2007, is similar to the trial scheduling order except that, in *addition to* the *required* declarations, it permits parties to present live testimony limited to the scope of the material in the declaration (Super. Ct. Contra Costa County, Local Rules, rule 12.8 F.1.a, italics added). The rule also provides that "[a]ny required evidentiary foundation (including stipulations) for admission of the proposed exhibits shall be completely set forth in the declaration(s), as *all rulings will be based on the declarations alone.*" (*Id.*, rule 12.8 F.5.a), italics added.)

In addressing the issues raised by petitioner, we also exercise our inherent authority to ensure the orderly administration of justice and to settle important issues of statewide significance. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110 [51 Cal. Rptr. 3d 98, 146 P.3d 547]; *In re Roberts* (2005) 36 Cal.4th 575, 593 [31 Cal. Rptr. 3d 458, 115 P.3d 1121]; *Konig v. Fair Employment & Housing Com.* (2002) 28 Cal.4th 743, 745-746, fn. 3 [123 Cal. Rptr. 2d 1, 50 P.3d 718]; *Burch v. George* (1994) 7 Cal.4th 246, 253, fn. 4 [27 Cal. Rptr. 2d 165, 866 P.2d 92].) In addition to providing guidance to the trial courts, our discussion highlights the unusual burdens and restrictions that have been imposed upon family law litigants at the local level in response to increasing caseloads and limited judicial resources. We observe that this problem may merit consideration as a statewide policy matter, and suggest to the Judicial Council that it establish a task force for that purpose.

I

Marilyn and Jeffrey Elkins were married on April 20, 1980. They had one child, who was born in 1991. After Marilyn subsequently instituted marital dissolution proceedings, the issue of date of separation was bifurcated and tried first. Property issues were to be tried on September 19, 2005.

The matter proceeded subject to a local rule of court providing that at trials in dissolution matters, "[d]irect examination on factual matters shall not be permitted except in unusual circumstances or for proper rebuttal. The Court may decide contested issues on the basis of the pleadings submitted by the parties without live testimony." (Super. Ct. Contra Costa County, Local Rules, former rule 12.5(b)(3), eff. July 1, 2005.) In addition, the rule provided that "[s]ubject to legal objection, amendment, and cross-examination, all declarations shall be considered received in evidence at the hearing." (*Ibid.*) Under the rule, a party's failure to file responsive pleadings, including declarations, in the time prescribed by the rules authorized the court to "permit the matter to proceed as a default," or order a continuance and impose a



monetary sanction on the "untimely party." (*Id.*, former rule 12.5(b)(4).)

A trial scheduling order (TSO or order) imposed additional restrictions and sanctions. Like the rule, it ordered that all direct testimony at trial be presented prior to trial in the form of declarations "filed in lieu of oral direct testimony, subject to cross-examination." Indeed, even if a party's witness refused to sign a declaration, the party was required to file an unsigned declaration.

Under the TSO, the parties were ordered to file initial declarations executed by themselves and by their witnesses 10 court days prior to trial, along with trial briefs. The order provided that the declarations were to "explain" the appended complete set of trial exhibits, and that "[a]ny required evidentiary foundation for admission of the proposed exhibits shall be completely set forth in the declaration(s)."

Sanctions for failure to comply with the TSO were severe. "Failure to provide initial declarations may result in there being no direct testimony on that issue and issue sanctions may result. Failure to file a trial brief indicates to the court that no cases are being relied on by that side. Failure to provide a declaration because a witness refused to sign it *shall not excuse the filing of [any] unsigned declarations.*" (Italics added.)

The TSO directed the parties to file responsive declarations and exhibits five court days prior to trial, along with any objections to exhibits, as well as responsive briefs and any demands for the production of declarants for the purpose of cross-examination. The TSO concluded with the following warning: "Failure to comply with these requirements will constitute good cause to exclude evidence or testimony at trial and/or to make adverse inferences or findings of fact against the non-complying party."

Marilyn, who was represented by counsel, filed her declaration, exhibits, and trial brief on September 2, 2005, and her responsive declaration on September 8, 2005. Jeffrey, who was not represented by counsel, filed his trial brief and declaration on September 2, 2005. He failed to attach his exhibits, however, and his binder of 36 exhibits was not delivered to the court and to opposing counsel until one court day prior to the date set for trial.

According to Marilyn's declaration, the issues to be determined at trial included (1) valuation and disposition of the family home; (2) Jeffrey's right to reimbursement for postseparation improvements to the home; (3) the characterization and division of a multimillion-dollar litigation settlement awarded to Jeffrey's business; (4) the amount of Jeffrey's income from specified sources; (5) the characterization and division of assets withdrawn by Jeffrey from community accounts; (6) division of a retirement account held in Marilyn's name; (7) the status of certain property declared to be the separate property of Marilyn; (8) division of the contents of a joint safe deposit box; and (9) Marilyn's attorney fees. The issue of child support was reserved, and the parties waived spousal support.

The matter came on for trial. Counsel for Marilyn objected to all but two of Jeffrey's exhibits because, contrary to the TSO, Jeffrey's declaration failed to refer to the exhibits or offer a basis for their admission into evidence. The court had not received its copy of Jeffrey's declaration or exhibits when trial began, forcing it to review Jeffrey's copy on the bench. Marilyn's counsel announced he would not cross-examine Jeffrey if the court sustained counsel's objection to Jeffrey's exhibits, and asserted that Jeffrey therefore was "not entitled to offer any further evidence."

When Jeffrey explained that the procedure he had followed was the same he had engaged in at the trial of the bifurcated issue of the date of separation, the court admonished Jeffrey that he had misunderstood the objection raised by Marilyn's counsel. The court explained: "In order to get a document admitted into evidence under the trial scheduling order ... it says that the evidentiary basis and foundation for each exhibit must be set forth in the declaration so the other side can object to see, you know, if exhibits have an evidentiary basis or not. And [Marilyn's counsel is] saying that those exhibits don't have any foundation in your declaration. [¶] So if you can point me to the foundations *in your declarations*, then we—we'll dispose of that argument quickly[.] If not those—those exhibits that don't have an evidentiary foundation *will be stricken*." (Italics added.)

The court provided a "typical example of what I'm talking about with foundation," noting that Jeffrey's proposed exhibit No. 5 was not referred to in Jeffrey's declaration, "[s]o there's no way of knowing what this document is *without any testimony—direct testimony saying what this is or what it purports to [be]*." (Italics added.) Jeffrey attempted to explain that his exhibit No. 5 "refers to an accounting given to my wife—given by my wife to me, and this document is in relation to that."

The court responded: "I understand that. I've already reviewed your declaration. Tentatively, I am going to rule in favor of [Marilyn]. I'm going to allow you at one of the breaks that we have so as not to disrupt the flow right now to rethink your argument and give me the specific evidentiary foundations for these documents, but *I don't see it in your declaration*. Particularly, the one we were specifically taking about, Exhibit 5, *I don't see any specific reference to it in your declaration*. There's a general reference to a general category." (Italics added.) Jeffrey responded: "Your Honor, there are no specific references in any document." The court, after asking Jeffrey not to interrupt, continued: "There's a general reference, and under that general category, arguably, every document that's ever been filed in this case would be generally referred to, but *what's required under the trial scheduling order* are the specific evidentiary foundations so that I can rule on them. [¶] There being no evidentiary support for [Jeffrey's exhibits] with the exception of Exhibit 3 and 12 [to which counsel for Marilyn had not objected because the foundation for the evidence appeared in Jeffrey's declaration], the objections will be sustained tentatively subject to further argument after the morning break." (Italics added.) No such break ensued.

Marilyn's declaration and exhibits were admitted into evidence, and she rested her case. Counsel for Marilyn objected to any consideration of the proposed order filed by Jeffrey because the filing of that document was untimely under the TSO.

The court stated its understanding, based upon Jeffrey's declaration, that Jeffrey did not wish to cross-examine Marilyn and that he consented to a dissolution of the marriage. Jeffrey stated he was resting his case. The court confirmed that Jeffrey had withdrawn his request to cross-examine Marilyn, and Jeffrey added that he also wished to withdraw his request to cross-examine expert witness Eggers. The court stated: "Well, before you rest, I'm assuming you would like to admit into evidence your declaration," but Jeffrey stated he did not wish to do so. Accordingly, Jeffrey's declaration was not admitted into evidence. Without providing the anticipated "morning break," the court invited closing argument. Although observing that the trial was proceeding "quasi by default, so to speak," the court stated that both parties still should address the subjects of "the furniture lists" and the contents of the safe deposit box. Counsel for Marilyn responded that those issues had been settled by stipulation prior to trial.

Jeffrey confirmed the stipulations and further offered to relinquish his interest in the family home and in his automobile. The court responded that Jeffrey's offer was too drastic and that the court would permit him to reconsider, stating that the court would "render a decision along the lines of [Marilyn's counsel's] proposed order after trial, despite your request here, because that was not what was before me to be tried today. And so the tenor of what you've just said is in contrast to the declaration that you submitted to me that I prepped on, your trial brief ... ."

Jeffrey responded that he was not referring to the proposed order he had submitted prior to trial. He declared: "My concern is that *I came into the trial with the intent of presenting my position, and I'm being cut out of that completely with only reliance on two exhibits which are —no way can defend my position.* So I might as well give up my position and leave it to the best well-being of my family.?" (Italics added.)

The court responded that Jeffrey would be well advised to secure legal counsel, and that the exclusion of Jeffrey's exhibits would not lead to an order depriving him of his interest in the family home, referring again to the proposed order submitted prior to trial by Marilyn's counsel. Jeffrey responded: "Your Honor, if you take a spreadsheet and you add up and deduct everything that [counsel for Marilyn] is asking for, I am left with nothing. Zero dollars. Zero house. Zero car. Nothing. So what's the difference?"

The court took the matter under submission. Marital status was terminated, and additional issues were reserved for future trial. The court asked the parties to decide by the end of the week whether to submit a settlement agreement (presumably reflecting Jeffrey's last-minute waiver of any interest in the community property) or instead to ask the court to rule upon the proposed orders that were submitted to the court prior to trial. Apparently the parties selected the latter option; on October 3, 2005, the court filed a final disposition of the property issues still reflecting Jeffrey's half-interest in the family home. The order noted the parties' stipulation concerning child custody and visitation and the court's reservation of jurisdiction over the matter of child support. By further stipulation, the parties waived spousal support, and the court's jurisdiction over that issue was terminated. The community interest in Marilyn's retirement account was divided, and the court resolved the additional property issues identified in Marilyn's declaration in a manner substantially reflecting the order proposed by Marilyn.

Jeffrey filed a petition for writ of mandate or prohibition in the Court of Appeal. He asserted that there was no statutory authority for the local rule and order preventing the parties from presenting the direct examination of witnesses and requiring the evidentiary foundation for proposed exhibits to be established in a declaration filed well in advance of trial. He further argued that the local rule and order established a system of "trial by declaration" that violated due process principles and placed an "unreasonable burden" on litigants. Jeffrey's petition also contended that the sanctions established by the rule and order were inconsistent with the policy favoring trial on the merits, and that their enforcement by the trial court constituted an abuse of discretion requiring reversal of the judgment that resolved the parties' community property dispute.

The Court of Appeal summarily denied the petition. We subsequently granted petitioner's petition for review and ordered the Contra Costa County Superior Court to show cause why the challenged local rule and trial scheduling order should not be deemed invalid for the

reasons stated in the petition for writ of mandate or prohibition. <sup>3</sup> Prior to hearing oral argument, this court requested and received briefing on the question whether the local rules and order conflicted with the hearsay rule. (Evid. Code, § 1200.)

## FOOTNOTES

<sup>3</sup> Thereafter, we invited and received amicus curiae briefs from the Family Law Section of the Contra Costa County Bar Association, the California Association of Certified Family Law Specialists, and the Northern and Southern California Chapters of the American Academy of Matrimonial Lawyers, who were joined in their brief in support of petitioner by the Los Angeles County Bar Association, the Los Angeles County Bar Association Family Law Section, the Orange County Bar Association, the Honorable Donald B. King, Justice of the First District Court of Appeal (Retired), the Honorable Sheila Prell Sonenshine, Justice of the Fourth District Court of Appeal (Retired), the Honorable J.E.T. Rutter, Judge of the Orange County Superior Court (Retired), and the Honorable Richard Denner, Judge of the Los Angeles County Superior Court (Retired).

II

A

As respondent court asserts, trial courts possess inherent rulemaking authority as well as rulemaking authority granted by statute. (Rutherford v. Owens-Illinois, Inc. (1997) 16 Cal.4th 953, 967 [67 Cal. Rptr. 2d 16, 941 P.2d 1203] (Rutherford); Code Civ. Proc., §§ 128, 177, 575.1; Gov. Code, § 68070.) "It is ... well established that courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them. [Citation.] ... That inherent power entitles trial courts to exercise reasonable control over all proceedings connected with pending litigation ... in order to insure the orderly administration of justice. [Citation.]" (Rutherford, supra, 16 Cal.4th at p. 967.)

The scope of a court's inherent rulemaking authority has been discussed in various decisions (see, e.g., Rutherford, supra, 16 Cal.4th at pp. 967-968), and the outer limits of such authority are clear. <sup>4</sup> A trial court is without authority to adopt local rules or procedures that conflict with statutes or with rules of court adopted by the Judicial Council, or that are inconsistent with the California Constitution or case law. (Rutherford, supra, at pp. 967-968; see also Hall v. Superior Court (2005) 133 Cal.App.4th 908, 916-918 [35 Cal. Rptr. 3d 2061.]) As provided in Government Code section 68070, subdivision (a): "Every court may make rules for its own government and the government of its officers *not inconsistent with law or with the rules adopted and prescribed by the Judicial Council.*" (Italics added; see also 2 Witkin, Cal. Procedure (4th ed. 1996) Courts, § 204, p. 272; *id.* (2006 supp.) § 204, pp. 87-88.) In sum, local courts may not create their own rules of evidence and procedure in conflict with statewide statutes.

## FOOTNOTES

<sup>4</sup> In speaking of the limits of a trial court's authority, we note that constitutional issues concerning separation of powers between the judicial branch and the legislative branch are

not involved in the present case. (See, e.g., Superior Court v. County of Mendocino (1996) 13 Cal.4th 45 [51 Cal. Rptr. 2d 837, 913 P.2d 1046].)

Reviewing courts have not hesitated to strike down local court rules or policies on the ground they are inconsistent with statute, with California Rules of Court promulgated by the Judicial Council, or with case law or constitutional law. Appellate decisions have invalidated local rules or restricted their application in many areas of affected litigation, including dissolution actions, <sup>5</sup> litigation under the Trial Court Delay Reduction Act (Gov. Code, § 68600 et seq.) (fast track litigation), <sup>6</sup> complex litigation (Cal. Rules of Court, rule 3.400 et seq.), <sup>7</sup> and general civil litigation. <sup>8</sup> We also have disapproved rules and procedures adopted by the Courts of Appeal (see People v. Pena (2004) 32 Cal.4th 389, 400 [9 Cal. Rptr. 3d 107, 83 P.3d 506]), as well as rules adopted by the Judicial Council. (See People v. Hall (1994) 8 Cal.4th 950, 963 [35 Cal. Rptr. 2d 432, 883 P.2d 974].)

## FOOTNOTES

<sup>5</sup> In Hogoboom v. Superior Court (1996) 51 Cal.App.4th 653, 656 [59 Cal. Rptr. 2d 254], for example, the reviewing court invalidated a trial court rule imposing its own family law mediation fee in addition to fees specifically established by statute. In McLaughlin v. Superior Court (1983) 140 Cal.App.3d 473, 481 [189 Cal. Rptr. 479], the reviewing court held that a local rule denied due process of law in purporting to permit a custody mediator to make a written recommendation to the court without providing a factual basis and without facing cross-examination.

<sup>6</sup> See Boyle v. CertainTeed Corp. (2006) 137 Cal.App.4th 645, 655 [40 Cal. Rptr. 3d 501] (local courts cannot shorten the statutory notice period or alter standards for production of evidence for summary judgment hearings); Hock v. Superior Court (1990) 221 Cal.App.3d 670, 673-674 [270 Cal. Rptr. 579] (invalidating local fast track rule under which counsel could not be substituted subsequent to trial setting conference without court's approval).

<sup>7</sup> See First State Ins. Co. v. Superior Court (2000) 79 Cal.App.4th 324, 336 [94 Cal. Rptr. 2d 104] (Invalidating trial court's case management order that prohibited filing motions for summary judgment absent compliance with various nonstatutory conditions).

<sup>8</sup> See Thatcher v. Lucky Stores, Inc. (2000) 79 Cal.App.4th 1081, 1086 [94 Cal. Rptr. 2d 575] (local rule authorizing granting motion for summary judgment based solely on the absence of opposition was inconsistent with applicable statute); Pacific Trends Lamp & Lighting Products, Inc. v. J. White, Inc. (1998) 65 Cal.App.4th 1131, 1135-1136 [76 Cal. Rptr. 2d 918] (local rule improperly required parties to "meet and confer" prior to filing motion for new trial; sanctions for violation of local rule were inconsistent with statutory procedure); Sierra Craft, Inc. v. Magnum Enterprises, Inc. (1998) 64 Cal.App.4th 1252, 1255-1256 [75 Cal. Rptr. 2d 681] (local rule improperly permitted grant of summary judgment on grounds inconsistent with statute); Kalivas v. Barry Controls Corp. (1996) 49 Cal.App.4th 1152, 1158 [57 Cal. Rptr. 2d 200] (Kalivas) (local rule governing summary judgment requiring that parties file joint statement of disputed and undisputed facts was invalid because it was inconsistent with statute); Wells Fargo Bank v. Superior Court (1988) 206 Cal.App.3d 918, 922-923 [254 Cal. Rptr. 68] (invalidating local rule requiring

"extensive" or "complicated" motions for summary judgment to be specially set under notice period shorter than that established by statute); St. Vincent Medical Center v. Superior Court (1984) 160 Cal.App.3d 1030, 1033-1034 [206 Cal. Rptr. 840] (invalidating trial-setting-conference order shortening time for exchange of expert witness lists to less than what was provided by statute).

A common theme in the appellate decisions invalidating local rules, and one that also appears in the present case, is that a local court has advanced the goals of efficiency and conservation of judicial resources by adopting procedures that deviated from those established by statute, thereby impairing the countervailing interests of litigants as well as the interest of the public in being afforded access to justice, resolution of a controversy on the merits, and a fair proceeding.

In Lammers v. Superior Court (2000) 83 Cal.App.4th 1309 [100 Cal. Rptr. 2d 455], for example, a local court rule governing family law proceedings required the parties to file a timely request that the court review the case file prior to a hearing on a contested matter. In order to avoid obvious constitutional issues, the reviewing court refused to endorse the trial court's view that the local rule relieved the court of the obligation to read the case file *at all* when the request to do so was untimely. The Court of Appeal explained that "a measure implemented for the sake of efficiency cannot jeopardize the constitutional integrity of the judicial process [citation]. In other words, court congestion and 'the press of business' will not justify depriving parties of fundamental rights and a full and fair opportunity to present all competent and material evidence relevant to the matter to be adjudicated." (*Id.* at p. 1319.)

9

## FOOTNOTES

9 See Lokeijak v. City of Irvine (1998) 65 Cal.App.4th 341, 342 [76 Cal. Rptr. 2d 429] (disapproving a local court policy discouraging the filing of motions for summary judgment because, according to the local courts, the statutory procedure was "unduly time-consuming"); Jovine v. FHP, Inc. (1998) 64 Cal.App.4th 1506, 1532 [76 Cal. Rptr. 2d 322] (trial court's policy of referring summary judgment motions to a referee did not comport with statute; "[e]fficiency is not more important than preserving the constitutional integrity of the judicial process"); see also Mediterranean Construction Co. v. State Farm Fire & Casualty Co. (1998) 66 Cal.App.4th 257, 265 [77 Cal. Rptr. 2d 781] (trial court erred in declining to hear oral argument on a motion for summary judgment; reviewing court urged trial courts not to "elevate judicial expediency over [a statutory] mandate").

This court made similar observations in Garcia v. McCutchen (1997) 16 Cal.4th 469 [66 Cal. Rptr. 2d 319, 940 P.2d 906] (*Garcia*), involving fast track litigation. (Gov. Code, § 68600 et seq.) We concluded a trial court was without authority to dismiss an action for failure to comply with local fast track rules, because such a dismissal contravened a statute establishing that sanctions for failure to comply with these rules should fall on counsel, and not on the party, if counsel was responsible for the failure to comply. (*Garcia, supra*, 16 Cal.4th at p. 471.)

We rejected the trial court's argument that such power to dismiss was essential to serve the



goal of reducing delay in litigation. We pointed out that the Trial Court Delay Reduction Act did not elevate delay reduction over the right of a litigant to present his or her case to the court, nor was delay reduction favored over deciding cases on the merits. "Cases filed in California's trial courts should be resolved as expeditiously as possible, *consistent with the obligation of the courts to give full and careful consideration to the issues presented, and consistent with the right of parties to adequately prepare and present their cases to the courts.*" [Citation.] Thus, in establishing delay reduction programs, the Legislature recognized *competing* public policy considerations and 'attempt[ed] to balance the need for expeditious processing of civil matters with the rights of individual litigants.' [Citation.]" (*Garcia, supra*, 16 Cal.4th at pp. 479-480.)

## B

Although some informality and flexibility have been accepted in marital dissolution proceedings, such proceedings are governed by the same statutory rules of evidence and procedure that apply in other civil actions (with exceptions inapplicable to the present case). The Family Code establishes as the law of the state—and superior courts are without authority to adopt rules that deviate from this law—that except as otherwise provided by statute or rule adopted by the Judicial Council, "the rules of practice and procedure applicable to civil actions generally ... apply to, and constitute the rules of practice and procedure in, proceedings under [the Family Code]." (Fam. Code, § 210; see *In re Marcus* (2006) 138 Cal.App.4th 1009, 1017 [41 Cal. Rptr. 3d 861]; *In re Marriage of Mallory* (1997) 55 Cal.App.4th 1165, 1170 [64 Cal. Rptr. 2d 667]; cf. *Fewel v. Fewel* (1943) 23 Cal.2d 431, 438-439 [144 P.2d 592] (conc. opn. of Traynor, J.) (*Fewel*); see also 11 Witkin, Summary of Cal. Law (10th ed. 2005) Husband and Wife, § 99, pp. 152-154; Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2007) ¶¶ 13:80, 13:81, pp. 13-22 to 13.23; Samuels & Mandabach, Practice Under the Cal. Family Code (Cont.Ed.Bar 2007) §§ 16.3-16.5, pp. 745-746.)

The rule and order that were applied in the present case called for the admission of declarations in lieu of direct testimony at trial. It is well established, however, that declarations constitute hearsay and are inadmissible at trial, subject to specific statutory exceptions, unless the parties stipulate to the admission of the declarations or fail to enter a hearsay objection. (Evid. Code, § 1200; *Lacrabere v. Wise* (1904) 141 Cal. 554, 556-557 [75 P. 185] (*Lacrabere*); see also *Estate of Fraysher* (1956) 47 Cal.2d 131, 135 [301 P.2d 848]; *Fewel, supra*, 23 Cal.2d at pp. 438-439 (conc. opn. of Traynor, J.); *Pajaro Valley Water Management Agency v. McGrath* (2005) 128 Cal.App.4th 1093, 1107 [27 Cal. Rptr. 3d 741]; *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal. App. 3d 586, 597 [155 Cal. Rptr. 63]; *Reifler v. Superior Court* (1974) 39 Cal. App. 3d 479, 484-485 [114 Cal. Rptr. 356] (*Reifler*); *Estate of Horman* (1968) 265 Cal. App. 2d 796, 805 [71 Cal. Rptr. 780].)

The law provides specific exceptions to the general rule excluding hearsay evidence (see, e.g., Evid. Code, § 1220 et seq.), including those governing the admission of affidavits or declarations. For example, in the marital dissolution context, Family Code section 2336 requires various items of proof of fact to be submitted to the court in support of a *default* judgment and requires such proof to be in the form of an affidavit. (Fam. Code, § 2336, subd. (a).) But there is no general statutory exception to the hearsay rule for contested marital dissolution *trials*. On the contrary, the existence of a specific statutory exception for default judgments, where an adversary proceeding is waived or forfeited, only serves to support the general rule that hearsay declarations are inadmissible at contested marital dissolution trials.

Another statutory exception to the hearsay rule permits courts to rely upon affidavits in certain motion matters. (Code Civ. Proc., § 2009.)<sup>10</sup> Although affidavits or declarations are authorized in certain *motion* matters under Code of Civil Procedure section 2009, this statute does not authorize their admission at a contested *trial* leading to judgment. As this court explained in Lacrabere, supra, 141 Cal. 554, Code of Civil Procedure section 2009 "has no application to the proof of facts which are directly in controversy in an action. It was not intended to have the effect of changing the general rules of evidence by substituting voluntary *ex parte* affidavits for the testimony of witnesses. The section only applies to matters of procedure,—matters collateral, ancillary, or incidental to an action or proceeding,—and has no relation to proof of facts the existence of which are made issues in the case, and which it is *necessary to establish to sustain a cause of action.*" (Lacrabere, supra, at pp. 556–557, italics added; see also Fewel, supra, 23 Cal.2d at p. 438 (conc. opn. of Traynor, J.) ["The fact that section 2009 permits [the admission of affidavits] 'upon a motion' does not mean that the issues in a contested case may be determined and a judgment rendered on the basis of written statements of parties not before the court"]; Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶ 13:106, p. 13-30.)

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<sup>10</sup> Code of Civil Procedure section 2009 provides: "An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, and in uncontested proceedings to establish a record of birth, or *upon a motion*, and in any other case *expressly permitted by statute.*" (Italics added.)

The same point was emphasized in Reifler, supra, 39 Cal. App. 3d 479. In that case the Court of Appeal considered a challenge to a Los Angeles Superior Court policy of adjudicating long-cause hearings on postjudgment *motions* in marital dissolution matters solely on the basis of affidavits. The reviewing court acknowledged that affidavits ordinarily are excluded as hearsay, but concluded Code of Civil Procedure section 2009 provides a hearsay exception that grants a trial court discretion to decide *motions* on the basis of affidavits—even when facts are controverted—but *only so long as the controverted facts do not require factfinding resulting in a judgment.* (Reifler, supra, at pp. 484–485.) The court expressed no doubt that hearsay was inadmissible at a contested marital dissolution trial.

A recent decision by this court demonstrates the limited application of Code of Civil Procedure section 2009, and also illuminates the policy underlying application of the hearsay rule when questions of credibility arise, as they certainly do in dissolution trials. (People v. Johnson (2006) 38 Cal.4th 717 [42 Cal. Rptr. 3d 887, 133 P.3d 1044] (*Johnson*)). In *Johnson*, we concluded that at a pretrial hearing on a motion to suppress evidence in a criminal case (Pen. Code, § 1538.5), the prosecution cannot carry its burden by submitting affidavits in lieu of live testimony. The pertinent statute, Penal Code section 1538.5, did not provide for such a procedure, and the historic practice long had been to require oral testimony. (Johnson, supra, 38 Cal.4th at pp. 726, 728.)

Moreover, as we explained in *Johnson*, "allowing a prosecutor to oppose a suppression motion with written affidavits in lieu of live testimony would be inconsistent with the trial court's vital



function of assessing the credibility of witnesses." (*Johnson, supra*, 38 Cal.4th, at p. 729, fn. 8; see *id.* at p. 726.) A suppression motion "presents issues as to which the credibility of witnesses often is of critical significance" (*id.* at p. 731), and the witness's personal presence and oral testimony is significant because it "enable[s] the trier of fact to consider the demeanor of the witness in weighing his testimony and judging his credibility" (*id.* at p. 733).

We also observed in *Johnson* that, unlike a pretrial suppression motion, the motions referred to in Code of Civil Procedure section 2009 are on "preliminary or ancillary procedural matters" that historically have been decided on the basis of affidavits alone, whereas it is well settled that section 2009 does not change the rules of evidence. (*Johnson, supra*, 38 Cal.4th at p. 730.) Quoting *Lacrabere, supra*, 141 Cal. 554, 556-557, we confirmed that section 2009 "has no relation to proof of facts the existence of which are made issues in the case, and which it is necessary to establish to sustain a cause of action." (*Johnson, supra*, at p. 730, italics added.)

We conclude that respondent's rule and order are inconsistent with the hearsay rule to the extent they render written declarations admissible as a basis for decision in a contested marital dissolution trial. As we shall discuss, our conclusion is consistent with fundamental principles established in other statutes. All relevant evidence is admissible, including evidence bearing on the issue of witness credibility (Evid. Code, §§ 210, 351), and the oral testimony of witnesses supplies valuable evidence relevant to credibility, a critical issue in many marital dissolution trials. Permitting oral testimony rather than relying upon written declarations also is consistent with the historically and statutorily accepted practice of conducting trial by means of the oral testimony of witnesses given in the presence of the trier of fact. (See Evid. Code, §§ 711, 780; Code Civ. Proc., §§ 2002, 2005.) The conclusion we reach also permits us to avoid the difficult question whether the local rule and order violate petitioner's right to due process of law, "[m]indful [as we are] of the prudential rule of judicial restraint that counsels against rendering a decision on constitutional grounds if a statutory basis for resolution exists." (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1190 [86 Cal. Rptr. 2d 778, 980 P.2d 337].) This rule directs that "if reasonably possible, statutory provisions should be interpreted in a manner that avoids serious constitutional questions." (*Id.* at p. 1197.)

As noted, evidence bearing on the issue of credibility of witnesses comes within the basic rule that all relevant evidence is admissible, except as specifically provided by statute. (Evid. Code, §§ 210, 351.) Describing a party's fundamental right to present evidence at trial in a civil case, Witkin observes: "One of the elements of a fair trial is the *right to offer relevant and competent evidence on a material issue*. Subject to such obvious qualifications as the court's power to restrict cumulative and rebuttal evidence ... , and to exclude unduly prejudicial matter [citation], denial of this fundamental right is almost always considered reversible error. [Citations.]" (3 Witkin, Cal. Evidence (4th ed. 2000) Presentation at Trial, § 3, pp. 28-29, italics added.) Ordinarily, parties have the right to testify in their own behalf (*Guardianship of Waite* (1939) 14 Cal.2d 727, 730 [97 P.2d 238]), and a party's opportunity to call witnesses to testify and to proffer admissible evidence is central to having his or her day in court. (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 677 [56 Cal. Rptr. 2d 803]; see *Spector v. Superior Court* (1961) 55 Cal.2d 839, 843, 844 [13 Cal. Rptr. 189, 361 P.2d 909].)

As stated by an appellate court in 1943 with reference to a trial court's refusal to permit a witness to testify in a marital dissolution matter: "We are fully cognizant of the press of

business presented to the judge who presides over the Domestic Relations Department of the Superior Court ... , and highly commend his efforts to expedite the handling of matters which come before him. However, such efforts should never be directed in such manner as to prevent a full and fair opportunity to the parties to *present all competent, relevant, and material evidence* bearing upon any issue properly presented for determination. [¶] Matters of domestic relations are of the utmost importance to the parties involved and also to the people of the State of California. ... To this end a trial judge should not determine any issue that is presented for his consideration until he has heard all competent, material, and relevant evidence the parties desire to introduce." (*Shippey v. Shippey* (1943) 58 Cal. App. 2d 174, 177 [136 P.2d 86], Italics added.)

Oral testimony of witnesses given in the presence of the trier of fact is valued for its probative worth on the issue of credibility, because such testimony affords the trier of fact an opportunity to observe the demeanor of witnesses. (*Ohio v. Roberts* (1980) 448 U.S. 56, 64 [65 L. Ed. 2d 597, 100 S. Ct. 2531].) A witness's demeanor is " 'part of the evidence' " and is "of considerable legal consequence." (*People v. Adams* (1993) 19 Cal.App.4th 412, 438 [23 Cal. Rptr. 2d 512]; see *Melner v. Ford Motor Co.* (1971) 17 Cal. App. 3d 127, 140-141 [94 Cal. Rptr. 702] ["[O]ne who sees, hears and observes [a witness] may be convinced of his honesty, his integrity, [and] his reliability ... because a great deal of that highly delicate process we call evaluating the credibility of a witness is based on ... 'intuition' ".])

The testimony of witnesses given on *direct* examination is afforded significant weight at trial in ascertaining their credibility; cross-examination does not provide the sole evidence relevant to the weight to be accorded their testimony. "In a contested hearing, the precise words and demeanor of a witness during direct as well as cross-examination bears on the credibility and weight the trier of fact accords the witness's testimony. Moreover, observation of a witness on direct is important to the planning and execution of effective cross-examination." (*Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1513-1514 [33 Cal. Rptr. 3d 89].)

Ordinarily, written testimony is substantially less valuable for the purpose of evaluating credibility. (*Goldberg v. Kelly* (1970) 397 U.S. 254, 269 [25 L. Ed. 2d 287, 90 S. Ct. 1011] ["Particularly where credibility and veracity are at issue ... written submissions are a wholly unsatisfactory basis for decision"]; *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 414 [58 Cal. Rptr. 2d 875, 926 P.2d 1061] [" 'it's pretty difficult to weigh credibility without seeing the witnesses' ".]) "A prepared, concise statement read by counsel may speed up the hearing, but it is no substitute for the real thing. Lost is the opportunity for the trier of fact and counsel to assess the witness's strengths and weaknesses, recollection, and attempts at evasion or spinning the facts ... . [¶] ... [W]ith a scripted statement, prepared and agreed to by one party in advance, comes the passage of time and with that lapse may come the party's unyielding acceptance of the script. Lost to cross-examination is the opponent's ability to immediately test and dissect adverse testimony." (*Denny H. v. Superior Court, supra*, 131 Cal.App.4th at p. 1514, Italics omitted.)

The historical pattern of a trial as an oral examination of witnesses in the presence of the trier of fact rather than an exchange of written declarations is reflected in Evidence Code section 711, which provides that "[a]t the *trial* of an action, a *witness can be heard only in the presence* and subject to the examination of all the parties to the action, if they choose to attend and examine." (Italics added.) Also in conformity with the historical form of a trial, Evidence Code section 780 directs the trier of fact to evaluate witness credibility by, among other methods, *observing* the witness's demeanor "*while testifying*" as well as his or her

"attitude toward the action in which he testifies or toward the giving of testimony." (Italics added.)

Although Code of Civil Procedure section 2002 provides that the testimony of a witness may be taken by affidavit, <sup>11</sup> deposition, <sup>12</sup> or oral examination, deposition testimony is admissible at trial only as prescribed by certain statutes not at issue in the present case. Moreover, affidavits (a term including declarations made under oath), as explained, constitute hearsay and are inadmissible at trial in the absence of stipulation or lack of objection, or as otherwise provided by law.

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<sup>11</sup> An affidavit constitutes a "written declaration under oath, made without notice to the adverse party." (Code Civ. Proc., § 2003.)

<sup>12</sup> A deposition constitutes "a written declaration, under oath, made upon notice to the adverse party, for the purpose of enabling him to attend and cross-examine." (Code Civ. Proc., § 2004; see Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶ 13:125, pp. 13-34 to 13-35 [use of discovery at trial].)

The only remaining means recognized in Code of Civil Procedure section 2002 for taking the testimony of a witness is *oral examination*. In a provision that again reflects the historical form of the adversary trial in which live witnesses are examined in the presence of the parties and the finder of fact, oral examination is defined as "an examination *in [the] presence* of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal *from the lips of the witness*." (Code Civ. Proc., § 2005, italics added.) <sup>13</sup>

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<sup>13</sup> Marilyn, real party in interest, contends "sworn declarations of witnesses present at the trial and available for cross-examination are not hearsay ... ." Marilyn reasons that when a declaration is properly sworn, the declarant becomes a witness who "testifies" within the meaning of Code of Civil Procedure section 2002, and at least as long as the declarant is present at the hearing, the declaration does not fall within Evidence Code section 1200's prohibition on hearsay evidence. We agree with the court in Schraer v. Berkeley Property Owners' Assn. (1989) 207 Cal.App.3d 719 [255 Cal. Rptr. 453], which rejected a similar argument that an affidavit itself constitutes "testimony" at a hearing. (*Id.* at p. 731 [Code of Civil Procedure section 2002 cannot be used to read into every other statutory use of the word 'testimony' a license to use affidavits or deposition transcripts for all the same purposes as oral examination].) Moreover, as petitioner points out, Marilyn's theory would authorize courts to adopt a system of trial by declaration in *any* civil action, despite the restrictions of Code of Civil Procedure section 2009 and the hearsay rule.

In sum, consistent with the traditional concept of a trial as reflected in provisions of the Evidence Code and the Code of Civil Procedure, we conclude that respondent's rule and order calling for the admission and use of declarations at trial conflict with the hearsay rule.

C

Respondent contends courts have authority to adopt nonstatutory exceptions to the hearsay rule and that prior decisions approve of such exceptions in marital dissolution matters. Cases cited in support of the latter proposition, however (see, e.g., *Reifler, supra*, 39 Cal. App. 3d 479), conclude that statutory authorization, namely Code of Civil Procedure section 2009, exists for deciding *motion* matters in marital dissolution proceedings on the basis of declarations. As we have explained, this statute does not authorize the introduction of hearsay evidence at a contested *trial*. Respondent has not offered any persuasive argument in support of its claim that an individual local court may adopt a hearsay exception applicable solely to marital dissolution trials despite state law providing that marital dissolution proceedings are to be conducted in accordance with the ordinary rules governing civil trials, except as specified by statute. (Fam. Code, § 210.) <sup>14</sup>

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<sup>14</sup> The same statutory provision defeats respondent's claim that English tribunals historically resolved marital dissolution actions in courts of equity, in which declarations assertedly served as the primary basis for factfinding.

Respondent relies upon this court's decision in *In re Marriage of Brown & Yana* (2006) 37 Cal.4th 947 [38 Cal. Rptr. 3d 610, 127 P.3d 28] (*Brown & Yana*) for the proposition that courts have discretion not to hold a full evidentiary hearing in contested family law matters. Respondent's reliance is misplaced, as we shall explain.

When parties have been unable (privately or through mediation) to agree on custody, "the court shall set the matter for hearing on the unresolved issues." (Fam. Code, § 3185, subd. (a).) It is undisputed that such a hearing is an ordinary adversarial proceeding leading to a "final judicial custody determination." (*Brown & Yana, supra*, 37 Cal.4th at p. 959; see *id.* at pp. 955-956; *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 256 [109 Cal. Rptr. 2d 575, 27 P.3d 289]; see also *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 31-32 [51 Cal. Rptr. 2d 444, 913 P.2d 473].) But once a *judgment* has been entered in the custody matter, a postjudgment *motion* or request for an order to show cause for a change in custody, based upon an objection to the custodial parent's plan to move away, requires an evidentiary hearing only if *necessary*—that is, only if the moving party is able to make a *prima facie* showing that the move will be detrimental to the child or has identified "a material but contested factual issue that should be resolved through the taking of oral testimony." (*Brown & Yana, supra*, 37 Cal.4th at p. 962; see *id.* at p. 959.)

Our decision in *Brown & Yana, supra*, 37 Cal.4th 947, did not suggest litigants must make a *prima facie* showing of some kind in order to be entitled to proceed to *trial*. Nothing we said undermines the requirement that at a contested marital dissolution trial, prior to entry of *judgment*, the court must hold an evidentiary hearing on the disputed issues, at which the usual rules of evidence apply. Indeed, we explained that a trial court had authority to deny a full evidentiary hearing in *Brown & Yana* in part *because* the custody issue already had been fully litigated and the resulting judgment therefore was entitled to substantial deference in the absence of a showing of a significant change of circumstances. (*Id.* at pp. 955-956, 959-960;

see Burchard v. Garay (1986) 42 Cal.3d 531, 535 [229 Cal. Rptr. 800, 724 P.2d 486] [change of circumstances requirement is based upon res judicata principles]; In re Marriage of Burgess, supra, 13 Cal.4th at p. 38.) Nor did we discuss Code of Civil Procedure section 2009 or the hearsay rule in that case. <sup>15</sup>

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<sup>15</sup> Respondent also cites County of Alameda v. Moore (1995) 33 Cal.App.4th 1422 [40 Cal. Rptr. 2d 18]. In that case, the court determined that the informality of family law proceedings had gone too far when disputed factual matters in a district attorney's child support hearing were determined upon the mere unsworn statements of counsel. Although the court referred to local rules applicable to family law motions and contested trials under which declarations could be admitted in evidence (*id.* at p. 1427 & fn. 5), the court did not consider Evidence Code section 1200, Code of Civil Procedure section 2009, or Family Code section 210, provisions the court, of course, lacked authority to disregard. County of Alameda v. Moore, supra, 33 Cal.App.4th 1422, is disapproved to the extent it is inconsistent with our opinion in the present case.

Respondent also refers to Evidence Code section 765 as authority to admit hearsay declarations as a means of presenting the testimony of witnesses under direct examination. That statute provides in pertinent part: "The court shall exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be, and to protect the witness from undue harassment or embarrassment." (Evid. Code, § 765, subd. (a).)

This provision never has been interpreted as affording a basis for disregarding the statutory rules of evidence or working a fundamental alteration in the nature of a trial. Respondent's argument would prove too much; under its analysis, Code of Civil Procedure section 2009 would be unnecessary, because Evidence Code section 765 (a recodification of former Code Civ. Proc., § 2044, enacted in 1872) would confer authority to conduct any hearing or trial on the basis of affidavit evidence.

Respondent contends Evidence Code section 765 should be interpreted to afford trial courts the authority to require declarations in lieu of oral direct examination of witnesses, because assertedly similar language in rule 611(a) of the Federal Rules of Evidence (28 U.S.C.) has been interpreted to supply such authority to the federal courts. (See In re Adair (9th Cir. 1992) 965 F.2d 777, 779.) Respondent does not claim, however, that federal procedure includes provisions similar to Code of Civil Procedure section 2009, permitting affidavits in certain types of proceedings not leading to judgment, nor does respondent compare the rules of evidence and procedure we have discussed in the previous part of this opinion with the rules applicable in federal district courts. (Cf. also Fed. Rules Evid., rule 807, 28 U.S.C. [granting courts authority to admit reliable hearsay in the court's discretion].)

Respondent claims that if we conclude that declarations should be excluded as hearsay in contested marital dissolution trials, our decision will overturn settled practice and cause serious disruption. It does not appear, however, that respondent's description of settled practice is accurate. As is evident from our consultation of treatises and practice manuals, it is well settled that the ordinary rules of evidence apply in marital dissolution trials.

"The same rules of evidence apply at trial in a marital action as in civil actions generally. Thus, facts must be established by admissible evidence, and objections must be properly stated and based on the Evidence Code or other applicable statutes or court rules. ... [¶] A litigant has a right to present evidence at trial and, although the court can exclude otherwise admissible evidence because it is unduly time-consuming, prejudicial, confusing, or misleading, outright denial of the right to present evidence is error. [Citations.] The court's discretion to exclude oral testimony entirely ... does not apply to trials." (Samuels & Mandabach, Practice Under the Cal. Family Code, *supra*, § 16.5, pp. 745-746.) The same source recognizes that some courts nonetheless attempt to place special restrictions upon the introduction of evidence, noting that "[t]raditionally, trial judges have often regarded trials in marital actions as somehow less important than other civil litigation. This attitude has been both recognized and strongly criticized by appellate courts. [Citation.]" (*Id.*, § 16.10, p. 748; see also 11 Witkin, Summary of Cal. Law, *supra*, Husband and Wife, § 99, pp. 152, 154 [provisions governing civil trials apply unless otherwise specified by statute or Judicial Council rule, including the rules of evidence].) Another practice manual explains: "At a contested trial, affidavits are not competent evidence; though made under oath, they are hearsay ... ." (Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶ 13:106, p. 13-30; see also *id.*, ¶ 13:81, p. 13-22.1.)

Commenting upon Justice Traynor's concurring opinion in *Fewel, supra*, 23 Cal.2d 431, and this court's decision in *Lacrabere, supra*, 141 Cal. 554, respondent asserts we have limited the admissibility of declarations only when there is no opportunity for cross-examination. Although our decisions indeed have noted the absence of an opportunity for cross-examination, more broadly they have interpreted Code of Civil Procedure section 2009 as applying solely to hearings on motions, and *not* to a trial of issues leading to a judgment. (See *Lacrabere, supra*, 141 Cal. at pp. 556-567; see also *Fewel, supra*, 23 Cal.2d at pp. 438-439 (conc. opn. of Traynor, J.)) Respondent also claims the opportunity for cross-examination satisfies the policy underlying the hearsay rule. As we have explained, however, in addition to allowing a party to cross-examine adverse witnesses, the hearsay rule assures that the witness will appear in the presence of the trier of fact on direct examination, thereby further aiding it in evaluating the witness's demeanor and determining his or her credibility.

Marilyn contends that the distinction between hearings on motions (at which *Rejfler, supra*, 39 Cal. App. 3d 479, permits the introduction of hearsay evidence) and trials is illusory in the context of marital dissolution proceedings and should not be the basis for our decision in the present case. As she asserts, in many instances the family court retains jurisdiction over marital dissolution matters for an extended period, responding to repeated motions for interim rulings and for modification of orders. Yet we have drawn a distinction between hearings at which a judgment is entered, and hearings on postjudgment motions. A postjudgment motion for modification of a final child custody order, for example, requires the moving party to demonstrate a significant change of circumstances warranting departure from the judgment. (*Montenegro v. Diaz, supra*, 26 Cal.4th at p. 256.) A presumption exists that the judgment is correct and should not be disturbed—a presumption that would not be well founded were the judgment to be based upon hearsay (unless admitted into evidence upon stipulation of the parties). Marilyn fails to support her claim that, for the purpose of the hearsay rule, there is and should be no procedural or substantive distinction between motions and trials in the context of marital dissolution proceedings.

D



Marilyn claims petitioner forfeited any claim challenging respondent's rule barring oral examination of witnesses on direct examination, because he did not object on that basis. We do not agree that petitioner forfeited his claim. It should have been evident to the trial court that petitioner's inability to proceed stemmed both from the local rule precluding direct testimony and the order governing the admissibility of evidence.

In any event, even if petitioner failed to preserve his claim with respect to the prohibition on oral examination of witnesses, he certainly objected to the exclusion of nearly all of his evidence for noncompliance with the court's trial scheduling order. The trial court abused its discretion in sanctioning petitioner by excluding the bulk of his evidence simply because he failed, prior to trial, to file a declaration establishing the admissibility of his trial evidence. The sanction was disproportionate and inconsistent with the policy favoring determination of cases on their merits.

Although authorized to impose sanctions for violation of local rules (Code Civ. Proc., § 575.2, subd. (a)), courts ordinarily should avoid treating a curable violation of local procedural rules as the basis for crippling a litigant's ability to present his or her case. As the court declared in Kalivas, supra, 49 Cal.App.4th 1152, in the absence of a demonstrated history of litigation abuse, "[a]n order based upon a curable procedural defect [including failure to file a statement required by local rule], which effectively results in a judgment against a party, is an abuse of discretion." (Id. at p. 1161.)

This court made a similar point in Mann v. Cracchiolo (1985) 38 Cal.3d 18 [210 Cal. Rptr. 762, 694 P.2d 1134], in which an attorney failed to file opposition to a motion for summary judgment within the time prescribed by local rules. We concluded that the trial court abused its discretion in refusing to consider the tardy opposition. (Id. at p. 30.) "Judges ... generally prefer to avoid acting as automatons and routinely reject requests by counsel to function solely in a ministerial capacity. Rigid rule following is not always consistent with a court's function to see that justice is done. Cognizant of the *strong policy favoring the disposition of cases on their merits* [citations], judges usually consider whether to exercise their discretion in applying local court rules and frequently consider documents which have been untimely filed." (Id. at pp. 28-29, italics added.) <sup>16</sup>

## FOOTNOTES

<sup>16</sup> Terminating sanctions such as an order granting summary judgment based upon procedural error "have been held to be an abuse of discretion unless the party's violation of the procedural rule was willful [citations] or, if not willful, at least preceded by a history of abuse of pretrial procedures, or a showing [that] less severe sanctions would not produce compliance with the procedural rule. [Citations.]" (Parkview Villas Assn., Inc. v. State Farm Fire & Casualty Co. (2005) 133 Cal.App.4th 1197, 1215 [35 Cal. Rptr. 3d 411]; Security Pacific Nat. Bank v. Bradley (1992) 4 Cal.App.4th 89, 97-98 [5 Cal. Rptr. 2d 220] ["Sanctions which have the effect of granting judgment to the other party on purely procedural grounds are disfavored"].)

Even under the fast track statute, a demanding efficiency scheme that does not apply in family law matters (Gov. Code, §§ 68608, subd. (a), 68609, subd. (b)), the preference for trying cases on the merits prevails. For example, in Hernandez v. Superior Court (2004) 115

Cal.App.4th 1242 [9 Cal. Rptr. 3d 821], the reviewing court held that the trial court abused its discretion in refusing, in reliance upon a local fast track rule, to reopen discovery. "Strict adherence to these delay reduction standards has dramatically reduced trial court backlogs and increased the likelihood that matters will be disposed of efficiently, to the benefit of every litigant. [Citation.] Here, the trial court's orders promote judicial efficiency by maintaining strict time deadlines. [¶] But efficiency is not an end in itself. Delay reduction and calendar management are required for a purpose: to promote the just resolution of cases on their merits. [Citations.] Accordingly, decisions about whether to grant a continuance or extend discovery 'must be made in an atmosphere of substantial justice. When the two policies collide head-on, the strong public policy favoring disposition on the merits outweighs the competing policy favoring judicial efficiency.'" (*Id.* at p. 1246.) The fast track rules were not intended to override the strong public policy in favor of deciding cases on the merits when possible (*Garcia, supra*, 16 Cal.4th at p. 479), and we see no basis for disregarding the same strong public policy in marital dissolution actions. **17**

#### FOOTNOTES

**17** To demonstrate the harshness of respondent's application of its rule and order, we recall that under the fast track statutes, the burden of sanctions may not be imposed upon the client if it was the attorney who was responsible for violating the fast track rules. (*Gov. Code, § 68608, subd. (b); Garcia, supra*, 16 Cal.4th at pp. 481-482.) Under the fast track scheme, had Jeffrey been represented and had his counsel been responsible for making the mistakes attributed to Jeffrey, the trial court would not have been authorized to impose what amounted to issue sanctions affecting the merits of Jeffrey's case.

In the present case, the trial court applied the sanction provision of its local rules in a mechanical fashion without considering alternative measures or a lesser sanction, resulting in the exclusion of all but two of petitioner's 36 exhibits. Had the court permitted petitioner to testify, he could have provided some foundation for his exhibits. In applying the local rule and order mechanically to exclude nearly all of petitioner's evidence—and proceeding, in the words of the trial court, "quasi by default"—the trial court improperly impaired petitioner's ability to present his case, thereby prejudicing him and requiring reversal of the judgment. **18**

#### FOOTNOTES

**18** Respondent claims its efforts to assist petitioner were rejected, pointing to its offer to allow him to reconsider his position at a break in the court proceedings. But the court never announced a break, and the record supports our view that at best the court merely offered petitioner an opportunity to demonstrate that his declaration actually *complied* with the rule and order by providing a foundation in that document for the admission of his exhibits.

#### III

Respondent claims "[f]irst and foremost" that efficiency and the "expeditious resolution of family law cases" support its rule and order. It also seeks to justify these requirements on the



theory that they serve to reduce rancor and "adversarial confrontation between estranged spouses," and to assist the many self-represented litigants in the family law courts by "giving them direction as to how to prepare for trial, how to frame issues properly, and how to provide evidentiary support for their positions and ... avoid being 'blindsided' by the adverse party."

That a procedure is efficient and moves cases through the system is admirable, but even more important is for the courts to provide fair and accessible justice. In the absence of a legislative decision to create a system by which a judgment may be rendered in a contested marital dissolution case without a trial conducted pursuant to the usual rules of evidence, we do not view respondent's curtailment of the rights of family law litigants as justified by the goal of efficiency. What was observed three decades ago remains true today: "While the speedy disposition of cases is desirable, speed is not always compatible with justice. Actually, in its use of courtroom time the present judicial process seems to have its priorities confused. Domestic relations litigation, one of the most important and sensitive tasks a judge faces, too often is given the low-man-on-the-totem-pole treatment ... ." (*In re Marriage of Brantner* (1977) 67 Cal. App. 3d 416, 422 [136 Cal. Rptr. 635].)

Moreover, the amicus curiae briefs we have received strongly dispute respondent's assertion that its rule and order promote efficiency, reduce rancor or costs, promote settlement, or aid unrepresented litigants. In their brief, the Northern and Southern California Chapters of the American Academy of Matrimonial Lawyers (Academy) argue that the local rule and order only increase the burden on the trial courts and further strain limited judicial resources, because it is more time consuming for the court to examine lengthy declarations than it is to listen to testimony, leaving courts "with two options: (1) spend more time than they have available at court to read the lengthy materials, or (2) just give the written materials a cursory review, and rule by 'guesstimate.' This is not a choice favored by litigants, lawyers, or judicial officers."

The same brief characterizes as an "absurdity" respondent's claim that the rule and order help self-represented litigants by describing in detail how they must prepare for trial. On the contrary, the brief claims, "[t]he burdens created by the local court rule and [order] are so onerous that they overwhelm most attorneys, let alone self-represented litigants." According to the Academy's brief, the rule and order restrict access to justice by increasing the cost of litigation. The brief points to the added costs of preparing exhaustive declarations of all *potential* witnesses, including an evidentiary foundation for all proposed exhibits, and taking the deposition of nonparty witnesses in the event they refuse to prepare a declaration.

The Family Law Section of the Contra Costa County Bar Association commissioned a professional survey of family law practitioners in the county, and the great majority of those surveyed were decidedly critical of the rule and order, including the successor to the order at issue in the present case, believing the order did not increase judicial efficiency and, along with their clients, questioning whether courts have the time to read the voluminous binders of declarations and exhibits required by the rule. A substantial majority of family law attorneys in the county also reported finding the rule and order inordinately time consuming, difficult, and costly to comply with. <sup>19</sup>

## FOOTNOTES

19 The Association of Certified Family Law Specialists (ACFLS) filed a brief generally supporting petitioner's contentions. The ACFLS's brief also pointed to specific difficulties caused by respondent's order and rule: "With [respondent's] imposition of a discovery cut-off before any judicially supervised settlement, a litigant is forced to either [forgo] potentially necessary depositions or [incur] unnecessary expense. This creates a larger schism in the ever-widening two-tiered justice system—that for litigants who can afford to opt out of the public court system and retain private judges who do not impose unreasonable and arbitrary deadlines and that for those who cannot afford to do so." Further, the ACFLS complains that respondent's deadlines are very difficult to meet. For example, a party's notice of intent to call the opposing party as a witness, along with a description of "the testimony the party expects to elicit," is due the same day the initial declarations are due. (Super. Ct. Contra Costa County, Local Rules, rule 12.8 F.1.a, b, eff. Jan. 1, 2007; *ibid.*, eff. July 1, 2006.)

Respondent suggests its rule and order encourage settlement by "apprising both sides, well in advance of trial, of the facts that will be presented." Local attorneys reported, however, that unfortunately the rule and order have not aided settlement, because parties take extreme positions in their declarations, causing an increase in animosity and a diminished likelihood of settlement. The various amici curiae, including local practitioners, confidently claim that any increase in settlements achieved by the rule and order occur because litigants generally cannot afford the substantial added litigation costs created by compliance with the rules.

We are most disturbed by the possible effect the rule and order have had in diminishing litigants' respect for and trust in the legal system. The Contra Costa survey confirmed that litigants believed the rule and order deprived them of the essential opportunity to "tell their story" and "have their day in court," and felt the rule and order caused the lawyers who drafted the declarations to be the persons testifying, not themselves. "Members uniformly report that their clients are stunned to be told that they will not get to tell their story to the judge," and express "shock, anxiety and outrage" along with the belief that "they had been denied their right to have their case heard by a judicial officer." Overwhelmingly, practitioners criticized the rule and order for creating what their clients understood to be a lesser standard of justice for family law litigants.

A recent statewide survey reflects a similar concern with court procedures that do not permit family law litigants to tell their story, a circumstance reported by litigants to diminish their confidence in the courts. (Judicial Council of Cal., Admin. Off. of Cts., Rep. on Trust and Confidence in the California Courts (2006) Phase II, pp. 31–36 [self-represented litigants "express[ed] frustration that they did not have a chance to fully explain their side of the story to the judge"; "public trust and confidence in the courts ... will continue to be negatively affected [by] procedures [that] do not permit [litigants] to tell their story at some length and in their own words".])

We are aware that superior courts face a heavy volume of marital dissolution matters, and the caseload is made all the more difficult because a substantial majority of cases are litigated by parties who are not represented by counsel. (See Judicial Council of Cal., Rep. on Statewide Action Plan for Serving Self-Represented Litigants (2004) Exec. Summary, p. 2 [80 percent of the cases have at least one unrepresented party by the time of disposition].) In its 2006 report, the Judicial Council estimated that "although family and juvenile cases represent 7.5 percent of total filings, they account for nearly *one-third* of the trial courts' judicial workload ...

1 Colbern C. Stuart, III (SBN 177897)  
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2 LEXEVIA, PC  
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3 Marina Del Rey, CA 90292  
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4 Facsimile: (424) 228-5272

5 Attorney for *Amici Curiae*,  
CALIFORNIA COALITION FOR FAMILIES  
6 AND CHILDREN, NATIONAL COALITION FOR  
MEN

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

11 EMAD G. TADROS, M.D.,  
12 Plaintiff,

13 v.

14 STEPHEN DOYNE, Ph.D., and DOES 1  
THROUGH 100,  
15 Defendants.

Case No. 37-2008-00093885-CU-BT-CTL  
Judge: Honorable Jay M. Bloom  
Dept.: C-70

**PROOF OF SERVICE**

Date: November 20, 2009  
Dept: C-70  
Time: 11:00 a.m.  
Hon. Jay Bloom

17  
18 I am, and the time of service hereinafter mentioned, a citizen of the United States and a  
resident of the County of San Diego. I am over the age of eighteen years, and not a party to the  
19 within action. My business address is: Lexevia, PC, 4139 Via Marina Ste PH1303, Marina Del  
Rey, CA 90292.

20 On November 13, 2009, I served the following document:

21 **COMBINED (1) APPLICATION FOR LEAVE TO FILE AS *AMICI CURIAE* AND (2)**  
22 ***AMICUS CURIAE* BRIEF OF PROPOSED *AMICI CURIAE*, (A) CALIFORNIA**  
23 **COALITION FOR FAMILIES AND CHILDREN AND (B) NATIONAL COALITION**  
FOR MEN, IN SUPPORT OF PLAINTIFF DR. EMAD TADROS' MOTION TO  
CONTINUE HEARING AND CONDUCT DISCOVERY AND EXHIBITS THERETO

24 By transmitting via electronic mail the documents listed above to the e-mail address set forth  
25 below on this date before 5:00 p.m.

26  
27  
28

1 Christopher J. Zopatti, Esq.  
2 CALLAHAN THOMPSON SHERMAN & CAUDILL, LLP  
3 111 Fashion Lane  
4 Tustin, CA 92780-3397  
5 (949) 261-2872  
6 F: (949) 261-6060  
7 Email: [czopatti@ctsclaw.com](mailto:czopatti@ctsclaw.com)

8 Michael J. Aguirre  
9 Aguirre, Morris & Severson LLP  
10 444 West C Street, Suite 210  
11 San Diego, CA 92101  
12 Ph: 619-876-5364  
13 Fax: 619-876-5368  
14 Email: [maguirre@amslawyers.com](mailto:maguirre@amslawyers.com)

15  
16  
17 I declare under penalty of perjury under the laws of the state of California that the foregoing is  
18 true and correct.

19  
20 Dated: 11/13/09  
21 Signature: [Handwritten Signature]

22  
23  
24  
25  
26  
27  
28

SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

Sharon Blanchet  
Ashworth, Blanchet, Christenson & Kalemkiarian

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
Colbern C. Stuart, III

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

JAN 19 2010

John A. Clarke, Executive Officer/Clerk  
By Mary E. Garcia Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)); the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Superior Court of CA, Los Angeles County  
111 N. Hill St  
Los Angeles, CA 90012

CASE NUMBER: **87-2010-00092953-CU-NP-CTL**  
(Número del Caso):  
BC429951

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Colbern C. Stuart, III, Esq. 4129 V. MARINA PH3, Marina Del Rey, CA 90292

DATE: JAN 19 2010 Clerk, by JOHN A. CLARKE Deputy  
(Fecha) JAN 19 2010 (Secretario) MARY E. GARCIA (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (Form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010))



- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
  - as the person sued under the fictitious name of (specify):
  - on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
  - by personal delivery on (date):

File by Fax

1 Colbern C. Stuart, III (SBN 177897)  
2 LEXEVIA, PC  
3 4139 Via Marina PH 3  
4 Marina Del Rey, CA 90292  
5 Telephone: (310) 746-6112  
6 Facsimile: (424) 228-5272

7 Attorney for Plaintiff COLBERN C. STUART, III

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

JAN 15 2010

John A. Clarke, Executive Officer/Clerk  
By Mary E. Garcia, Deputy  
MARY E. GARCIA

90292  
A6017

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES, CENTRAL DIVISION

37-2010-00092953-CU-NP-CTL

10 COLBERN C. STUART, III,

11 an Individual,

12 PLAINTIFF

13 v.

14 ASHWORTH, BLANCHET,  
15 CHRISTENSON & KALEMKIARIAN

16 a Professional Corporation.

17 SHARON BLANCHET,

18 an Individual,

19 and does 1 -- 100, inclusive

20 DEFENDANTS

BC 429951  
VERIFIED COMPLAINT FOR DAMAGES  
FOR LEGAL MALPRACTICE, INTENTIONAL AND NEGLIGENT  
MISREPRESENTATION, FRAUD, BREACH  
OF CONTRACT, INTENTIONAL AND  
NEGLIGENT INFLECTION OF  
EMOTIONAL DISTRESS, BREACH OF  
FIDUCIARY DUTIES, AND UNFAIR  
BUSINESS PRACTICES PURSUANT TO  
CALIFORNIA BUSINESS AND  
PROFESSIONS CODE SECTION 17200 ET  
SEQ.; DEMAND FOR JURY TRIAL

21 1. This is a Complaint for Legal Malpractice, Intentional and Negligent Misrepresentation,  
22 Fraud, Breach of Contract, Intentional and Negligent Inflection of Emotional Distress, Breach of  
23 Fiduciary Duties, and Unfair Business Practices pursuant to California Business and Professions  
24 Code section 17200 et seq.

25 2. Plaintiff Colbern C. Stuart, III, Esq. ("Stuart") is a citizen of the state of California,  
26 doing business as managing partner of a law firm operating in Los Angeles, San Diego, and San  
27 Jose, and residing in Marina Del Rey, Los Angeles County, California.

28 3. Defendant Ashworth, Blanchet, Christenson & Kalemkiarian ("ABC&K") is a California  
Professional Corporation with a principal place of business located at 2250 Third Avenue, San

D-52

Mrs W Bryant Deason

File by Fax

CI/CASE: BC429951 LEA/DEF:  
RECEIPT #: CM42995130  
DATE PAID: 01/15/10 04:24 PM  
AMOUNT: \$55.00  
RECEIVED:  
CHECK #: 55.00  
CASH:  
CHARGE:  
CARD:

1 Diego, California, 92101 and doing business in Los Angeles County, CA.

2 4. Defendant Sharon Blanchet ("Blanchet") at all times relevant hereto was an attorney  
3 doing business at ABC&K with a principal place of business located at 2250 Third Avenue, San  
4 Diego, California, 92101 and doing business in Los Angeles County, CA.

5 5. Venue within this County and division is appropriate as all times relevant hereto,  
6 Defendants were conducting business as a law firm specializing in the area of family law in Los  
7 Angeles and San Diego counties by representing, advising, communicating, collecting revenue  
8 from, making representations to, and causing harm to Plaintiff within Los Angeles County.

9 6. Defendants and ABC&K, Blanchet, and Does 1 – 100 and each of them at all times  
10 relevant hereto were the agents of every other Defendant, acting within the scope of said agency,  
11 such that each and every Defendant herein is liable and accountable for the acts of each other  
12 Defendant.

13 7. Plaintiff is unaware of the true names and capacities of Does 1-100 and will amend this  
14 Verified Complaint for Damages upon learning the true names and capacities of said parties.

**First Cause of Action: Legal Malpractice  
(Against Defendants and Does 1-10)**

15 8. Plaintiff incorporates herein paragraphs 1-7 above as if set forth fully herein.

16 9. At all times relevant hereto, Defendants owed a duty of care to Plaintiff to represent him  
17 in legal advice, communications, billing, and guidance in accordance with relevant legal  
18 standards of care within the practice of law.

19 10. Defendants breached the relevant duty care by failing to adequately represent Plaintiff in  
20 providing competent legal advice, full and accurate communications, accurate billing, and legal  
21 advice in accordance with relevant legal standards within the practice of law, as detailed more  
22 fully below.

23 11. Specifically, Defendants, inter alia, recommended that Plaintiff stipulate to retaining  
24 Stephen Doyne ("Doyne") as a mediator in the family law matter in which Plaintiff was  
25 involved.

26 12. Defendants represented to Plaintiff that Doyne was one of the most qualified  
27 professionals in San Diego County.

28 13. Defendants represented to Plaintiff in an email from Blanchet to Stuart that "You'll love  
Dr. Doyne!"

14. Defendants represented to Plaintiff that Doyne, as a mediator, preferred to work toward a

- 1 shared custody plan between parents.
- 2 15. Defendants represented to Plaintiff that Doyne charged reasonable fees and was less  
3 expensive than other methods, and less expensive than litigating such matters in Court.
- 4 16. Defendants represented to Plaintiff that Doyne "always" recommends 50/50 custody  
5 sharing between parents.
- 6 17. Defendants failed to advise Plaintiff that Doyne had a close personal and professional  
7 relationship with opposing counsel Jeffrey Fritz and Marilyn Bierer (collectively "Opposing  
8 Counsel").
- 9 18. Defendants failed to advise Plaintiff that on information and belief that Doyne had  
10 received numerous referrals of clients/patients and generated millions of dollars in revenue from  
11 referrals by Opposing Counsel.
- 12 19. Defendants failed to advise Plaintiff that Doyne was not authorized to conduct mediations  
13 because he regularly failed to file papers required by California Rules of Court to qualify him as  
14 a mediator, C.R.C. 5.010, including, inter alia, the following forms: FL 325, FL 326, and FL 327  
15 (attached hereto at exhibits "A", "B", and "C" respectively).
- 16 20. Defendants failed to research Doyne's qualifications and eligibility, and failed to advise  
17 Plaintiff that these forms were forms required by law before Doyne could act as mediator in the  
18 Stuart matter or any other matter which Doyne had worked.
- 19 21. Defendants failed to advise Plaintiff that Doyne's failure to file forms FL 325, FL 326,  
20 and FL 327 made him legally incompetent to perform the services for which Defendant  
21 recommended him.
- 22 22. Defendants failed to advise Plaintiff that Doyne had previously failed to file the required  
23 forms in approximately hundreds of similar matters, including numerous other matters for which  
24 Defendants had recommended Doyne.
- 25 23. Defendants failed to properly investigate Doyne's background, qualifications, credentials,  
26 relationships with opposing counsel, and history of filing forms FL 325, FL 326, and FL 327.
- 27 24. Defendants failed to advise Plaintiff that Doyne's failure to file these required forms  
28 enabled Doyne to overcharge for his services, to commit tax evasion in Plaintiff's matter and  
dozens of similar matters for which Defendants recommended Doyne.
25. Defendants failed to advise Plaintiff that Doyne was in fact not authorized to conduct the  
hundreds of mediations and evaluations he had performed for years prior, including Plaintiff's,



1 and was not authorized to perform the services Defendants recommended Doyne for Plaintiff.

2 26. Defendants failed to advise Plaintiff that Doyne's C.V. contains numerous  
3 misrepresentations, misleading statements, falsified credentials and false claims relating to his  
4 experience.

5 27. Defendants failed to advise Plaintiff that dozens of Doyne's present and former clients  
6 had complained about Doyne's services, accusing him of extortion, fraud, dishonesty, bias,  
7 overbilling, falsified credentials, tax evasion and/or numerous additional misrepresentations.  
8 Defendants knew or had reason to know of many such complaints. See Exhibits D-Q attached  
9 hereto.

10 28. Defendants advised Plaintiff that Doyne would perform collateral investigation with third  
11 parties to verify claims made by litigants, yet Doyne failed to perform said collateral  
12 investigations with any third parties as Defendants represented:

13 29. Defendants represented to Plaintiff that Doyne was honest and reliable. Doyne was not  
14 honest and reliable.

15 30. Defendants advised Plaintiff that Doyne would not permit ex-parte contact between  
16 himself and other parties without Plaintiff's presence or consent. Doyne in fact initiated or  
17 acquiesced to extensive ex-parte contact between himself and other parties without Plaintiff's  
18 presence or consent.

19 31. Defendants failed to advise Plaintiff that despite Doyne's track record of  
20 misrepresentations and abuse, Doyne had claimed that no one could sue him for extortion, fraud,  
21 misrepresentation, dishonesty, overbilling and incompetence because he claimed to be "immune"  
22 or "privileged" from all such lawsuits.

23 32. Defendants failed to advise Plaintiff that Doyne would not conduct a "mediation", but  
24 would instead attempt to act beyond his authority as a "judge" in the case.

25 33. Defendants failed to advise Plaintiff that Doyne regularly overbilled for services he did  
26 perform.

27 34. Defendants failed to advise Plaintiff that Doyne regularly billed for services that he did  
28 not, in fact, perform.

35. Defendants failed to advise Plaintiff that Doyne would use his position as "mediator" to  
refer Plaintiff to Doyne's many colleagues—many of whom also charge exorbitant fees—and

1 require that Plaintiff utilize those professionals' unnecessary services or risk losing custody of  
2 his child.

3 36. Defendants knew or had reason to know, yet failed to advise Plaintiff that Doyne did not  
4 possess the qualifications, licenses, and degrees he claims to possess.

5 37. Defendants failed to advise Plaintiff that Doyne would use Plaintiff's son as a "pawn" to  
6 attempt to extract tens of thousands of dollars from Plaintiff, depriving Plaintiff of thousands of  
7 dollars.

8 38. Defendants failed to advise Plaintiff that Doyne regularly told parties he produced a  
9 report to both counsel for "review and approval" prior to delivering it to the Court, but regularly  
10 failed to abide by that promise.

11 39. Defendants failed to advise Plaintiff that Doyne falsely claimed that he preferred "equal  
12 and shared custody" between parents and that he would work toward such an "equal and shared"  
13 custody situation.

14 40. Defendants failed to advise Plaintiff that Doyne would use divisive instruments such as  
15 unnecessary supervised visitation, separation instructions, stay-away from school instructions,  
16 and unreasonable, unnecessary, and harmful restrictions on constitutionally guaranteed civil  
17 liberties to extract funds from Plaintiff.

18 41. After being retained by Plaintiff based upon Defendants' representations, Doyne stated  
19 that he used a "bag of tricks" to coerce his clients/patients into compliance with his profiteering  
20 agenda rather than seeking healthy, cooperative resolutions.

21 42. Defendants failed to advise Plaintiff that Doyne would utilize the "Caldwell Report"  
22 interpretive tool for the MMPI survey. The Caldwell report is a computer print-out similar to an  
23 astrology reading.

24 43. Defendants failed to advise Plaintiff that Doyne regularly dishonestly manipulated the  
25 "Caldwell Report" astrology reading to disfavor one or the other party.

26 44. Defendants failed to advise Plaintiff that Doyne fails to use any scientific methodology,  
27 which is generally accepted in the field of Psychology for the purposes which Defendants, and  
28 each of them, proscribed. For example, Defendants knew or had reason to know that Caldwell  
Report has been widely criticized, and even called "dangerous." Two notable family law  
specialists **Cheryl L. Karp, Ph.D.** and **Leonard Karp, J.D.** have described the problems with

1 the test thusly:

2           However, the MMPI must be interpreted in light of the biographical and  
3 other information about the client. "Blind interpretations," where nothing  
4 is known of the client except perhaps gender, may be useful for testing a  
5 psychologist's memory about the descriptive statements attached to certain  
6 individual scale elevations or certain profiles. They are not useful, *and*  
7 *may be dangerous*, in interpreting MMPI results for forensic work or any  
8 other professional psychology work.  
9 Computer use has brought other problems to the area of MMPI  
10 interpretation. Computer programs have been developed to allow  
11 computers to score the raw data ... produce the files in printed graph form,  
12 and do the work of fetching interpretative information from "cookbooks."  
13 Undeniably, the computers save valuable time for psychologists. Yet, their  
14 use with the MMPI has opened the way for some serious problems.  
15 This advanced technology lends an image of "truth" or "accuracy" to the  
16 printout results that may mislead even psychologists. Also, this technology  
17 is more readily available to non-psychologists than is wise. Persons with  
18 no or minimal training in psychology and psychological testing may use a  
19 computer report to make statements about a person's personality  
20 functioning that sound definitive or are presented as such. Even generally  
21 competent and respectable practitioners in fields normally thought to be  
22 "allied to" psychology, such as psychiatry or clinical social work, can  
23 make the grievous error of believing that they have acted responsibly or  
24 done a good job when they make conclusions about a client  
25 based solely or predominantly on the MMPI, using a computer to produce  
26 scores and interpretations. The MMPI needs to be interpreted in light of  
27 many factors often not considered by the computer programs. Computer  
28 programs frequently require only information about the client's sex, age,  
and achieved education level, not other factors such as current life  
stressors or other life experiences or environmental factors.  
Furthermore, when used as part of a testing battery, the MMPI results  
must be integrated with all the testing and historical data and finally

1 interpreted in light of all of the psychologist's psychological knowledge.  
2 Doing this may alter the psychologist's original interpretation of the  
3 MMPI, as will be discussed below in the section on the interpretation of  
4 the Rorschach. Non-psychologists should not and usually cannot  
5 administer a whole test battery and interpret it appropriately.  
6 Secondly, many computer reports focus mainly on giving statements about  
7 the elevation of each individual scale, with perhaps cursory statements  
8 about the highest two scales considered together. Unfortunately, there is  
9 not a statement at the beginning of the computer printout explaining  
10 whether the statements are from research with a normal or abnormal  
11 population.

Source: ParentingPlan.net

12 45. Doyne was not "honest" and, in fact, regularly committed malpractice, fraud, extortion,  
13 and perjury.

14 46. Defendants knew or had reason to know of all of the above facts, including Doyne's  
15 dishonesty and manipulation.

16 47. Doyne was also not "thorough" as he frequently failed to review or analyze dozens of  
17 documents and abundant evidence presented to him, failed to review his clients' file, made  
18 reckless, false, and malicious recommendations clearly indicating he had not reviewed the file,  
19 and acted with oppression, fraud, and malice.

20 48. Defendants failed to advise Plaintiff that Doyne regularly refers clients to a select group  
21 of his professional colleagues to perform additional unnecessary, fraudulent, and/or harmful  
22 services such as intrusive and expensive supervised visitation, unnecessary child counseling, and  
23 supervision centers.

24 49. Defendants failed to advise Plaintiff that Doyne and his colleagues would attempt to  
25 entrap Plaintiff and/or his son in months or years of such extensive, unnecessary, and harmful  
26 services, draining him of financial resources.

27 50. Defendants failed to advise Plaintiff that many other alternatives to use of Doyne were  
28 preferable under these circumstances, including collaborative parenting education, "true"  
informal mediation, mediation with unbiased mediators, mediation with volunteer attorneys,  
mediation with less expensive mediators, mediation with individuals who waive all claims to

1 immunity, mediation with mediators who would agree to qualified immunity, attorney-to-  
2 attorney "four way" informal negotiations, confidential counseling, as well as other alternative  
3 dispute resolution techniques.

4 51. Doyne admitted that he was, in fact, not authorized to perform the activities that  
5 Defendants recommended him to perform and he attempted to perform, including unilaterally  
6 altering a custody schedule, changing the location of pick-ups and drop-offs, and imposing  
7 draconian burdens on the parties, which Doyne himself described as "handcuffs" and his "bag of  
8 tricks".

9 52. Defendants failed to advise Plaintiff that Doyne's pattern and practice in mediation and  
10 evaluation is in fact to encourage conflict between the parties by encouraging hostile behaviors,  
11 discouraging conciliatory behaviors, thereby prolonging the parties' conflict, increasing the  
12 number of sessions he would require the parties to attend to "resolve" the conflict he encouraged,  
13 charging more fees for his services, and thereby generating additional revenue for his practice at  
14 the Plaintiff's expense.

15 53. Defendants failed to advise Plaintiff that on information and belief Doyne's pattern and  
16 practice was to make false reports against his clients/patients to Child Protective Services,  
17 thereby using the trust placed in him as a mediator to jeopardize the Plaintiff's relationship with  
18 his child, then offer to modify or withdraw the false report in exchange for Plaintiff's payment to  
19 Doyne of more fees or otherwise "paying off" Doyne. On information and belief, Doyne has  
20 utilized such dishonest, subversive, and harmful techniques with many of his clients for decades,  
21 including with Defendants' clients. Defendants knew or had reason to know of such dishonest  
22 practices for years.

23 54. Defendants failed to disclose a conflict of interest in that they previously utilized Doyne  
24 in other client matters in which they or their clients paid Doyne thousands or tens of thousands of  
25 dollars in exchange for favorable opinions. Defendants failed to advise Plaintiff that Doyne  
26 would insist that Plaintiff comply with this "cash for custody" illegal extortion scheme.

27 55. Defendants failed to advise that Doyne was, in fact, an incompetent mediator, regularly  
28 made false statements under oath, regularly made false reports to CPS, regularly overcharged for  
his services, regularly charged breathtaking sums for unnecessary and harmful services, regularly  
billed for services he did not perform, regularly failed to meet the relevant professional standards  
in his profession of psychology, and otherwise regularly committed fraud and/or extortion on his

1 patients/clients, acted with oppression, fraud, and malice, imposed unnecessary and ineffective  
2 testing and other measures, and otherwise acted to extort and/or harm his patients/clients, and  
3 their children.

4 56. Defendants failed to advise Plaintiff that Doyne had violated state and federal  
5 patient/client and child privacy laws by disclosing confidential patient information to third  
6 parties and that he would do so in Plaintiff's matter. Defendant did make illegal, unethical, and  
7 inappropriate disclosures of private, privileged, and protected matters regarding Plaintiff.

8 57. After Plaintiff retained Doyne and advised Defendants of Doyne's incompetence and  
9 unprofessional behavior, Defendant Blanchet admitted that such behavior was "not unusual" for  
10 Doyne. Defendants failed to advise Plaintiff how to remedy such misbehavior by immediately  
11 seeking to discharge Doyne and seek one or more of the other, more efficient and helpful ADR  
12 procedures described above.

13 58. Defendants further failed to advise Plaintiff of his right to trial by jury.

14 59. Defendants had significant prior knowledge of Doyne's track record of illegal,  
15 incompetent, and unethical behavior. After Plaintiff engaged Doyne, Defendant Blanchet  
16 admitted to Plaintiff that Doyne "usually forms his opinions first, then twists the facts to fit his  
17 opinion."

18 60. Defendants suggested that Plaintiff commit bribery by paying Doyne for his illegal,  
19 unnecessary, harmful, and fraudulent behavior to form an opinion in Plaintiff's favor.

20 61. When Plaintiff realized concerns regarding Doyne's failures to investigate or otherwise  
21 properly perform his duties, he consulted with Defendants. Defendants falsely advised Plaintiff  
22 that he could not to request to record all sessions with Doyne to create a record of Doyne's  
23 illegal behavior. In fact, Plaintiff had a right to record all such sessions. Defendants'  
24 misrepresentation was to Plaintiff's disadvantage in that Plaintiff was prevented from preserving  
25 evidence of Doyne's fraud and abuse.

26 62. Defendants failed to advise Plaintiff that by agreeing to mediate the action with Doyne,  
27 Plaintiff would severely compromise his rights to review Doyne's opinions and actions by  
28 judicial review, appeal, and by other professional oversight organizations.

63. Defendants failed to advise Plaintiff that by agreeing to engage Doyne, that Doyne could  
commit any number of harmful, incompetent, malicious, fraudulent, and oppressive acts against  
Plaintiff and his child, and then seek to invoke "immunity" or "privilege" for such harmful,

1 incompetent, malicious, fraudulent, and oppressive acts.

2 64. Said failures actually and proximately caused Plaintiff damages in an amount to be  
3 proven at trial, but no less than \$1,000,000, accounting for the amount of money, time, and effort  
4 spent preparing for and attending sessions with Doyne, the amount of money paid to Doyne and  
5 the amount paid by Plaintiff to Defendants for Defendants' services relating to Doyne's  
6 emotional distress and punitive damages.

7 65. Defendants further failed to advise Plaintiff that on information and belief Doyne  
8 exhibited a pattern and practice of committing these fraudulent acts with dozens of other  
9 clients/patients as described in the attached Combined (1) Application For Leave To File As  
10 *Amici Curiae* And (2) amicus Brief Of Proposed *Amici Curiae*, (A) California Coalition For  
11 Families and Children (B) National Coalition For Men, In Support Of Plaintiff Dr. Emad Tadros'  
12 Motion To Continue Hearing And Conduct Discovery, attached hereto as Exhibit "D" and  
13 incorporated herein by reference.

14 66. Such acts and omissions were conducted with oppression, fraud, and malice.

15 67. On or about January, 2009, Judge Joel Wohlfeil, who had presided over this case for one  
16 year left the bench, to be replaced by Judge Lisa Schall.

17 68. Judge Lisa Schall has been reprimanded by the California Counsel for Judicial  
18 Excellence three times for inappropriate conduct, drunk driving, reckless driving, and abuse of  
19 discretion and was incompetent to sit in Plaintiff's family court matter.

20 69. At the time that Judge Schall entered the case, Defendants had knowledge of the above-  
21 referenced facts.

22 70. At the time Judge Schall entered the case, Defendants had a duty and opportunity to  
23 advise Plaintiff that he could file a pre-emptory "strike" against Judge Schall, removing her from  
24 the case.

25 71. Defendants failed to advise Plaintiff of Judge Schall's reprehensible track record as a  
26 judge.

27 72. Defendants further failed to advise Plaintiff that he could strike Judge Schall.

28 73. As an actual and proximate result, and in reliance on Defendants' failure to strike Judge  
Schall, Plaintiff failed to strike Judge Schall from the case.

1 74. As an actual and proximate result of Defendant's failure to advise Plaintiff to strike Judge  
2 Schall, Judge Schall proceeded to behave in exactly the same irresponsible manner she had  
3 previously behaved, issuing numerous recklessly irresponsible decisions, causing harm to  
4 Plaintiff in an exact amount to be proven at trial.

5 75. In performing the actions described hereinabove, Defendants acted with oppression,  
6 fraud, and malice.

7 **Second Cause of Action: Intentional and Negligent Misrepresentation**  
8 **(Against all Defendants and Does 11-20)**

9 76. Plaintiff incorporates herein paragraphs 1-75 above as if set forth fully herein.

10 77. The actions and representations described above were made intentionally, recklessly, and  
11 negligently.

12 78. The actions and representations described above were material.

13 79. The representations described above were reasonably relied on by Plaintiff in retaining  
14 Doyne and continuing to provide information to and work with Doyne, to pay Doyne, to pay  
15 Doyne and Defendants, and other acts in reliance thereon.

16 80. Said reliance by Plaintiff actually and proximately caused Plaintiff damages in an amount  
17 to be proven at trial, but no less than the amount of money, time, and effort spent preparing for  
18 and attending sessions with Doyne, the amount of money paid to Doyne, the amount billed by  
19 Defendants paid by Plaintiff for Defendants' services relating to Doyne, and cognizable  
20 emotional distress.

21 81. In performing the acts and missions described herein above, Defendants acted with  
22 oppression, fraud or malice.

23 **Third Cause of Action: Intentional and Negligent Infliction of Emotional Distress**  
24 **(Against Defendants and Does 21-30)**

25 82. Plaintiff incorporates herein paragraphs 1-81 above as if set forth fully herein.

26 83. Defendants' actions described hereinabove were intentional and/or negligent.

27 84. Defendants owed a duty of care to properly advise Plaintiff of the facts set forth herein  
28 above.

85. Defendants' actions described hereinabove actually and proximately caused Plaintiff  
emotional distress, loss of business opportunities, and loss of monies spent retaining Doyne and



1 charged by Defendants relating to Doyme.

2 **Fifth Cause of Action: Breach of Fiduciary Duties**

3 **(Against Defendants and Does 31-40)**

4 86. Plaintiff incorporates herein paragraphs 1-85 above as if set forth fully herein.

5 87. Defendants, as attorneys for Plaintiff, owed Plaintiff a fiduciary duty to preserve and  
6 protect Plaintiff's interests, rights, and opportunities.

7 88. Defendants, by virtue of the actions and failures to act described hereinabove, breached  
8 said fiduciary duties.

9 89. As an actual and proximate result of Defendants' breach of fiduciary duties described  
10 above, Plaintiff has been injured in an amount to be proven at trial.

11 90. In breaching said fiduciary duties, Defendants acted with oppression, fraud, or malice.

12 **Fifth Cause of Action: Unfair Business Practices pursuant to California**

13 **Business and Professions Code section 17200 et seq.**

14 **(Against Defendants and Does 41-50)**

15 91. Plaintiff incorporates herein paragraphs 1-90 above as if set forth fully herein.

16 92. Defendants, by virtue of the actions and failures to act described hereinabove, committed  
17 violations of California Business and Professions Code section 17200 et seq.

18 93. As an actual and proximate result of Defendants' violation of said Business and  
19 Professions code described above, Plaintiff has been injured in an amount to be proven at trial.

20 94. In breaching said Business and Professions Code provisions, Defendants acted with  
21 oppression, fraud, or malice.

22 95. On November 25, 2009, Plaintiff delivered a demand letter to Defendants, detailing the  
23 breaches and violations described hereinabove. Plaintiff requested Defendants'  
24 acknowledgement of and response to said claims. Defendant failed and refused to comply with  
25 Plaintiff's reasonable requests. As a result, Plaintiff has been forced to file this lawsuit.

26 **Prayer for Relief:**

27 Plaintiff hereby prays for relief as follows:

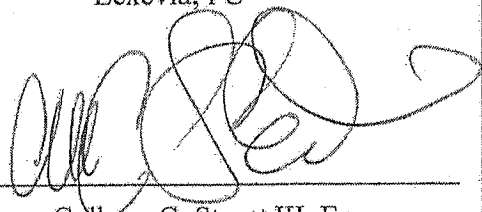
- 28
1. For damages in excess of \$100,000, the exact amount to be proven at trial;
  2. For interest, attorney's fees, and costs of suit incurred herein;

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- 3. For injunctive relief preventing Defendants from causing such further injuries to Plaintiff and other clients of Defendants;
  - 4. For additional remedial measures requiring Defendants to strictly adhere to the professional standards to which they are bound by law and submit to an annual audit by Plaintiff for compliance w/same; and
  - 5. For punitive and exemplary damages in an amount to be proven at trial;
  - 6. For such further and other relief as this Court deems just and proper.
- Plaintiff hereby demands a trial by jury.

Dated: December 31, 2009

Lexevia, PC

By: 

Colbern C. Stuart III, Esq.  
Attorney for *Plaintiff*

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VERIFICATION

I verify under penalty of perjury that the facts alleged in the foregoing complaint are true and correct to the best of my information, knowledge and/or belief.

Dated: December 31, 2009

BY:



COLBERN C. STUART III, Plaintiff

FILED CM-010

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES

JAN 15 2010

John A. Clarke, Executive Officer/Clerk  
By Mary E. Garcia, Deputy  
MARY E. GARCIA

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
Colburn C. Stewart, III (SBN 177897)  
4139 Via Marina, PH3  
Marina Del Rey, CA 90292  
TELEPHONE NO.: 310-796-6112 FAX NO.: 424-228-5272

ATTORNEY FOR (Name):  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles  
STREET ADDRESS: 111 N. Hill St.  
MAILING ADDRESS: Los Angeles, CA 90012  
CITY AND ZIP CODE:  
BRANCH NAME: Central

CASE NAME:

37-2010-00092953-CU-NP-GTL

**CIVIL CASE COVER SHEET**  
 **Unlimited** (Amount demanded exceeds \$25,000)  
 **Limited** (Amount demanded is \$25,000 or less)

**Complex Case Designation**  
 **Counter**  **Joinder**  
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: BC 429951  
JUDGE:  
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- |   |   |   |
|---|---|---|
| <p><b>Auto Tort</b></p> <input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46) <p><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b></p> <input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input checked="" type="checkbox"/> Other PI/PD/WD (23) <p><b>Non-PI/PD/WD (Other) Tort</b></p> <input type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35) <p><b>Employment</b></p> <input type="checkbox"/> Wrongful termination (36)<br><input type="checkbox"/> Other employment (15) | <p><b>Contract</b></p> <input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37) <p><b>Real Property</b></p> <input type="checkbox"/> Eminent domain/inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26) <p><b>Unlawful Detainer</b></p> <input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38) <p><b>Judicial Review</b></p> <input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <p><b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b></p> <input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p><b>Enforcement of Judgment</b></p> <input type="checkbox"/> Enforcement of judgment (20) <p><b>Miscellaneous Civil Complaint</b></p> <input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42) <p><b>Miscellaneous Civil Petition</b></p> <input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |
|---|---|---|

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify):

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 12/31/09

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

File by Fax

SHORT TITLE:	CASE NUMBER <b>BC 429951</b>
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**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

**This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.**

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:  
 JURY TRIAL?  YES CLASS ACTION?  YES LIMITED CASE?  YES TIME ESTIMATED FOR TRIAL  HOURS/  DAYS  
 37-2010-00092953-CU-NP-GTL

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4)  
**Step 1:** After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

**Step 3:** In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. Class Actions must be filed in the County Courthouse, Central District.</li> <li>2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).</li> <li>3. Location where cause of action arose.</li> <li>4. Location where bodily injury, death or damage occurred.</li> <li>5. Location where performance required or defendant resides.</li> </ol> | <ol style="list-style-type: none"> <li>6. Location of property or permanently garaged vehicle.</li> <li>7. Location where petitioner resides.</li> <li>8. Location wherein defendant/respondent functions wholly.</li> <li>9. Location where one or more of the parties reside.</li> <li>10. Location of Labor Commissioner Office.</li> </ol> |
|---|--|

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4. 1., 2., 4. 1., 2., 3. 1., 2., 4.
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.

File by Fax

Non-Personal Injury/Property Damage/  
Wrongful Death Tort (Cont'd.)

Employment

Contract

Real Property

Judicial Review Unlawful Detainer

SHORT TITLE:	CASE NUMBER:
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A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Professional Negligence (25)	<input checked="" type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation      Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE:	CASE NUMBER
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Judicial Review (Cont'd.)

Provisionally Complex Litigation

Enforcement of Judgment

Miscellaneous Civil Complaints

Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.


SHORT TITLE:	CASE NUMBER:
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input checked="" type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.		ADDRESS: 4139 Via Marina, PH3
CITY: Marina Del Rey	STATE: CA	ZIP CODE: 90292

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the central courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: 12/31/09

  
 (SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.