Omar R. Serrato [redacted]

Attorney for Respondent, MICHAEL MARRUCCINI

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

LAURA OWENS,

Petitioner

vs.

MICHAEL MARRUCCINI,

Respondent

Case No: FDV-18-813693

OPPOSITION TO PETITIONER LAURA OWENS MOTION TO PROCEED BY DECLARATION AND WAIVE LIVE TESTIMONY PURSUSANT TO FC § 217 AND CRC § 5.113

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Petitioner, Laura Owens ("Owens"), has a documented history of fabricating allegations of pregnancy, domestic violence, sexual assault, lying under oath, and presenting false evidence to the Court. **Exhibit A**[1] - She is currently facing seven (7) felony charges related to serial pregnancy fraud and perjury in the Superior Court of Maricopa County in Arizona (CR2025-

[1] Judge Mata's Findings in **Case No. FC 2023-052114 (Maricopa Cty., Ariz.):** Petition found baseless and fraudulent; referred for prosecution, leading to Petitioner's indictment on seven felonies including Fraud, Perjury and Forgery.

006831), **(Exhibit B – Criminal Indictment filed May 25, 2025),** including allegedly injecting herself with hCG[2] so that she would test "positive" on pregnancy tests. Her latest filing in California, seeking a permanent Domestic Violence Restraining Order against Respondent, Michael Marraccini ("Marraccini") is the latest in a series of escalating behaviors abusing court processes as a means of silencing her victims to prevent them from combatting her fictitious victim narrative.

Owens and Marraccini met in March of 2016 and engaged in an on again/off again romantic relationship that ended in August of 2017. During the relationship, Owens crafted a series of escalating narratives to emotionally manipulate Michael Marraccini (Hereafter, Marraccini). This included fabricating pregnancies, miscarriages, abortions, and fraudulently creating documents to support an ovarian cancer diagnosis. Owens used these traumatic fictions to coerce Marraccini into a dating relationship. For example, she used a fake/forged letter from a cancer specialist to encourage Marraccini to be more supportive of her. Exhibit C (From Forensic Report, *pgs. 682; 762, forged letter purporting to be from Doctor John Chung Kai Chan, authored by Laura Owens*).

Things became tenuous on January 7, 2018 when Owens confronted Marraccini and his sister in public, yelling and screaming obscenities at him. Two days later, on January 9, 2018, Owens obtained her retaliatory domestic violence restraining order (DVRO) in the Superior Court of California, County of San Francisco (Case No. FDV-18-813693) (granted temporarily on January 10, 2018). The allegations in the DVRO were supported by photographs from injuries sustained in horseback riding, claiming that it arose to such a degree she had to seek inpatient mental health treatment (an allegation now suddenly missing in this latest filing).

On January 22, 2018, Marraccini timely filed his DV-120 Response and denied all allegations made by Owens and noted her history of manipulative conduct, including her

[2] Human Chorionic Gonadotropic (hCG), is the hormone that is produced by pregnant persons and is what causes someone to test positive on a pregnancy test.

fabricated pregnancies and conflicting medical claims. Owens and Marraccini both submitted supplemental declarations and third-party witness statements. A hearing originally scheduled for January 26, 2018, was continued for further evidence, depositions, and declarations. Ultimately, on or about July 10, 2018, exhausted by the false narratives, Marraccini entered into a stipulated agreement resulting in the issuance of a two-year CLETS-reported Restraining Order After Hearing under Family Code §§ 6200 et seq., without any admissions of wrongdoing by Marraccini. That order was set to expire on July 10, 2020. Notably, there was never any finding that Marraccini ever committed an act of Domestic Violence.

On the date the Order was set to expire, July 10, 2020, Owens filed a Request to Renew the DVRO, alleging continued fear and allegations of various violations by Marraccini (which he affirmatively denies). A hearing was held on September 11, 2020, before the Hon. Sharon Reardon. Despite Marraccini's objections and without a finding of new abuse, the court granted a five-year renewal under Family Code § 6345(a), extending the DVRO to July 10, 2025. Between 2022 and 2024, Owens used this DVRO as a means of advancing a fabricated narrative that she was a domestic violence survivor. She made multiple public statements, including a January 2022 TEDxTalk and a June 2023 Chicken Soup for the Soul essay, all of which accused Marraccini of engaging in abuse.

Meanwhile, Owens continued to use her pattern of falsifying pregnancies with two new victims in the Superior Court of Maricopa County. In 2021 to 2022, she sued an Arizona man in Maricopa County for "abortion coercion" after she claimed he impregnated her with twins and then later claimed to have aborted them at this direction (CV2021-052893). When this man refused to continue dating her, she obtained a Protective Order (Arizona DVRO) against him, which she recently renewed (FN2022-052111; FN2024-052375). From 2023 to 2024, Owens was the subject of a public legal controversy involving another false twin pregnancy allegation against the former "Bachelor", Clayton Echard (FC2023-052114). When Mr. Echard refused to continue to date her, Owens obtained a protective order against him as well (FC2022-052771).

The litigation with Mr. Echard went to trial in of June 10, 2024, at which time Owen's prior victims, including Mr. Marraccini, were lawfully subpoenaed to testify. In June of 2024, the Maricopa County Superior Court found Owens was never pregnant by Mr. Echard and granted his request for a finding of non-paternity. The Court found Owens had acted unreasonably in the litigation, initiated litigation without basis or merit, provided false testimony, and that Owen's Petition was fraudulent and made to incite communication, a relationship, or both with Mr. Echard. Moreover, the Court found that Owens had a "a pattern of similar, if not identical behavior." **(Exhibit B – Ruling of Judge Mata, June 17, 2024)**. Owens was ordered to pay over $148,000 to Mr. Echard and was referred to the Maricopa County Attorney's Office for review.

On May 6, 2025, Owens was indicted by a Maricopa County Grand Jury on seven felony counts, including fraudulent schemes and artifices, perjury, forgery, and evidence tampering, related to the action with Mr. Echard. **(Exhibit A)**. On July 10, 2025, Owens submitted a second Request to Renew the Restraining Order, indicating her intent to seek a permanent order of protection against Marraccini, largely due to his attendance at the Echard trial pursuant to a lawful subpoena. (**Exhibit D – Subpoena Issued to Mike Marruccini)** On July 23, 2025, Owens filed a Motion to Proceed by Declaration and Waive Live Testimony to silence Marraccini, in furtherance of crimes she's currently being prosecuted for in Maricopa County. This newest abuse of process constitutes Witness Intimidation in violation of PC §136.1

Argument

Owens's bid to avoid live testimony is an affront to fundamental due process and a disgraceful ploy to shield her chronic falsehoods from cross-examination. Owens current felony defendant of seven felony counts (perjury, forgery, evidence tampering, among others) for conduct that involves the underlying facts of this case, now asks this Court to proceed with her criminal behavior without the scrutiny of live testimony. The Court should categorically reject this maneuver. California Family Code § 217 and CRC 5.113 mandate that live, in-person

testimony be received at hearings absent a stipulation or a compelling showing of good cause.

This is a substantive DVRO matter involving a restraining order where there has *never* been a finding of domestic violence, regarding material facts hotly in dispute, where Owens's credibility lies at the very heart of the case. Every factor enumerated in Rule 5.113 demands live testimony. Petitioner's motion attempts to evade cross-examination and continue her criminal pattern of deceit "without judicial scrutiny," hoping her written narrative will escape the crucible of truth-testing.

Owens's documented history of perjury and forged evidence invalidates her pleadings. Her claims must be tested under cross examination. The Court should deny Petitioner's motion, requiring her hearing on renewal to proceed as an evidentiary hearing with live testimony. In addition, Respondent Michael Marraccini requests that the Court impose appropriate sanctions for Owens's abuse of process and refer this matter to the District Attorney for investigation of potential criminal conduct (including witness intimidation and offering false evidence, again).

I. Live Testimony Is Required by Law in This Contested DVRO Hearing (Fam. Code § 217; CRC 5.113)

Under California law, live witness testimony is the rule, not the exception, at family law hearings involving restraining orders. **Family Code § 217(a)** provides that "at a hearing on any order to show cause or notice of motion" under the Family Code, absent the parties' stipulation or a finding of good cause, "the court shall receive any live, competent testimony that is relevant and within the scope of the hearing." The statute reflects a strong legislative mandate favoring live testimony so truth may be ascertained through examination, rather than written declarations. If a court finds "good cause" to refuse live testimony, it must state its reasons on the record or in writing **(Fam. Code § 217(b))**

California Rules of Court, Rule 5.113 implements **§ 217** by enumerating factors a court "shall consider" before denying live testimony. These factors include: "whether material facts

are in controversy" and "whether live testimony is necessary for the court to assess the credibility of the parties or other witnesses." Each of those factors decisively favors live testimony here.

This is a contested DVRO renewal involving diametrically opposed accounts of past events where virtually all material facts are in dispute. More importantly, credibility is paramount. Owens's case rests on her claims of fear and past abuse. This renewal hinges on whose narrative to believe. The California Evidence Code explicitly recognizes that in determining a witness's credibility, the fact-finder may consider "any matter that has any tendency in reason to prove or disprove the truthfulness" of their testimony, including the witness's demeanor, character for honesty, and prior inconsistent statements (Evid. Code § 780). These credibility factors cannot be meaningfully evaluated on the cold paper record. A declarant's written words reveal nothing of her tone, hesitation, or eye contact, and they prevent the opposing party from probing inconsistencies in real time.

To "assess the credibility" of Owens, whose honesty is very much in question, the Court must observe her live under oath and under cross-examination. California courts have consistently emphasized the importance of live testimony in contested matters, particularly in cases involving restraining orders or other significant issues where credibility and due process are at stake. The courts have condemned decisions based solely on written declarations without providing parties the opportunity to present live testimony, cross-examine witnesses, or otherwise fully participate in the proceedings. ***(In re Marriage of D.S. & A.S. (2023) 87 Cal.App.5th 926)[3] (In re Clifton V., 93 Cal. App. 4th 1400)[4]***

[3] In In re Marriage of D.S. & A.S., the California Court of Appeal held that the trial court abused its discretion by issuing a domestic violence restraining order (DVRO) based solely on the parties' declarations without further inquiry or live testimony. The absence of a meaningful opportunity to be heard violated procedural due process, and the court reversed the order, emphasizing the necessity of a hearing to determine the credibility of allegations and whether they constituted abuse under the Family Code

[4] In In re Clifton V., 93 Cal. App. 4th 1400, the California Court of Appeal found that the juvenile court erred in refusing to hear live testimony in a contested hearing on a Cal Wel & Inst Code § 388 petition. The court held that the denial of live testimony and cross-examination in a credibility contest between the mother and the child's grandmother violated due process. The error was not harmless, and the appellate court directed the trial court to conduct the required hearings without delay

The appellate court in *Marriage of D.S. and A.S*. emphasized that both Family Code § 6340 (governing DVRO issuance) and due process principles required a proper evidentiary hearing with witness testimony. Here, Owens wants the Court not only to consider issuing a permanent DVRO renewal against Respondent, but she desires criminal prosecution without ever hearing directly from either party in court. Granting such a request would violate the letter and spirit of § 217 and Rule 5.113, and would almost certainly constitute reversible error as grave miscarriage of justice.

Respondent intends to testify and present evidence after being properly noticed, and served, to refute Owens's claims. He has a constitutional right to cross-examine Owens on the stand. Owens cannot unilaterally "waive" the presentation of live testimony when the other side demands it. In the absence of any stipulation, the Court must take live testimony unless Owens shows specific "good cause" to refuse it, and as explained below, there is compelling cause to require Owens to appear and testify.

II. Petitioner Seeks to Evade Cross-Examination as Her Claims Cannot Withstand Scrutiny

Owens's knows her narrative will collapse under cross-examination. Owens's goal is not convenience or efficiency; it is concealment.

First, Petitioner's professed reasons for avoiding live testimony (to the extent she articulates any in her motion) do not hold water. Owens claims she feels "traumatized" or fearful of being in the same room as Respondent. After obtaining the DVRO in 2018, Owens actively sought out contact with Marraccini, messaging him repeatedly, approaching his family, even traveling across the country to confront his employer with her allegations. In September of 2024, while on a trip to New York, Owens made an impromptu stop at Marraccini's employer's HR department to alert his employer that he had a DVRO issued against him.

She gave a public TEDx talk in January 2022 describing herself as a domestic violence survivor and recounting her accusations against Marraccini. She authored a Chicken Soup for the Soul essay in June 2023 doing the same. In none of these very public forums did Owens

exhibit the slightest hesitation about "reliving" her claims. Yet now, when it comes time to actually substantiate her accusations under oath, Owens suddenly shrinks back and pleads to do it on paper. Her newfound reluctance is not about emotional difficulty, it is about avoiding the exposure of lies.

Second, Petitioner's procedural conduct shows a desire to ambush and silence Respondent rather than a bona fide need for accommodation. She hadn't even served Marraccini with the renewal Request or this motion, presumably hoping he might not appear at the August 1 hearing allowing her narrative to go unchallenged. In a declaration, she can say whatever she wants, blatant falsehoods, without risk of immediate impeachment.

In **(*Noergaard v. Noergaard (2015) 244 Cal.App.4th 76*)** the California Court of Appeal reaffirmed that denying a party the right to testify or offer evidence is reversible per se. The court emphasized that family law judges must ensure a full and fair opportunity for parties to present all competent, relevant, and material evidence. Litigants have a fundamental right to testify and call witnesses, subject to reasonable limitations such as excluding cumulative or unduly prejudicial evidence. ***Id.***

Owens's bid to avoid testifying is an attempted end-run around the truth-finding process established by basic due process. The last time Owens claims were tested under cross examination; she perjured herself to such a degree that she is currently facing 33 years in prison in Arizona. She fails to represent, in any of her filings, there has been a judicial finding that she lied under oath and a looming criminal prosecution for perjury. A litigant who has demonstrated propensity to lie cannot be given a pass to litigate via unsworn paper or unchecked declarations.

III. Petitioner's Motion and Renewal Request Are an Abuse of Process Aimed at Harassing and Intimidating a Witness (Penal Code § 136.1)

Owens is now a criminal defendant in Arizona. Respondent Marraccini is a material witness in that pending case. The State's disclosure explicitly lists "Michael Marraccini" as a witness in State v. Owens. **(Exhibit D – States Notice of Disclosure and Request for Disclosure,**

page 5) Owens's aggressive pursuit of a renewed restraining order (and her insistence on doing so via declaration) appears calculated to harass and intimidate Marraccini in violation of Penal Code § 136.1.[5] This isn't the first time she's used this tactic. She already tried to have Marraccini arrested for violating the instant DVRO because he complied with a lawful subpoena where he was a listed witness. She claimed his appearance by lawful subpoena was the basis for her renewal. She failed to represent to the court Mike was complying with a lawful subpoena (**Exhibit C).**

Owens is dragging Marraccini back into court on baseless allegations to obtain an order that would paint him as an "abuser" forever. Owens sends a clear message: if you cooperate with law enforcement against me, I will continue to make your life hell in court. This raises the specter of witness intimidation. The timing is suspect. Owens let the prior five-year DVRO renewal run its course until just weeks after she was indicted and officially learned that Marraccini could testify about her past lies. Then she suddenly moved to extend the DVRO (which was about to expire) and concurrently sought to eliminate live testimony at the hearing.

The inference is unmistakable: Owens wants to discredit Marraccini and undermine his standing as a witness against her. This is an outrageous perversion of the DVPA. The DVRO system is meant to protect victims, not to be wielded as a litigation weapon against someone who might testify in another proceeding. Courts have repeatedly warned against using restraining orders as "tactical weapons rather than shields." (See, e.g., Leahy v. Peterson, 98 Cal.App.5th 239 (2021)[6]; Ritchie v. Konrad, 115 Cal.App.4th 1275 (2004)[7]; In re Marriage of F.M.

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[5] California Penal Code 136.1 PC, makes it a crime to intimidate or attempt to intimidate a witness or victim to prevent them from participating in legal proceedings.

[6] In **Leahy v. Peterson, 98 Cal. App. 5th 239 (2023),** the appellate court reversed the renewal of a civil harassment restraining order because the superior court failed to require evidence of new harassment as mandated by Cal Code Civ Proc § 527.6. The court highlighted that granting a renewal based solely on the protected party's request and subjective desire, without proper legal standards, impedes justice. The court referenced Ritchie v. Konrad, 115 Cal. App. 4th 1275 to stress that protective orders impose significant burdens and should not be extended without sufficient grounds

[7] **In Ritchie v. Konrad (2004)**, the court held that a trial court erred in renewing a protective order merely because the protected person requested it. The court emphasized that renewals require a finding, by a preponderance of the evidence, that the protected person has a reasonable apprehension of future abuse. The court warned against using protective orders as automatic extensions without proper evidence, as this could lead to misuse and unnecessary burdens on the restrained party

& M.M., 65 Cal.App.5th 106 (2021)[8].) Granting Owens's renewal on the manufactured premise of "continued fear" would reward her misuse of the system and tacitly endorse a form of legal bullying.

IV. Owens's Failed to Disclose She Might Not Be Able to Give Live Testimony As She is Barred from Leaving the State of Arizona Due to her Felony Indictment.

Owens is currently subject to an Order of Release (OR) from Maricopa County Superior Court, Arizona, in connection with seven felony charges, including perjury, forgery, and evidence tampering arising directly from fabricated claims nearly identical to those she is now asserting here. Standard conditions of such OR releases generally prohibit defendants from leaving the state absent explicit judicial permission. Owen's physical appearance in California to participate in a contested evidentiary hearing requires prior approval from the Arizona criminal court. To seek that approval, she'd have to alert the criminal court that she is currently engaged in the same criminal behavior that she is facing 33 years in state prison for in Arizona. The underlying facts of this case necessarily form part of the foundation for the criminal case against her in Arizona.

The Arizona indictment is related to Owens's history of fabricating evidence and submitting false statements under oath. To participate live in these proceedings, Owens will have to convince the Arizona criminal courts to travel out-of-state so she can participate in a proceeding to continue criminal conduct that gave rise to her felony charges. It is exceedingly unlikely that the Arizona court will authorize such travel. This continued criminal conduct should be referred to the local district attorney for criminal prosecution, as Owens behavior continues to put individuals at risk of further victimization. This Court should not implicitly endorse Owens's attempted evasion of her OR conditions by allowing her to proceed on paper alone.

Ritchie v. Konrad, 115 Cal. App. 4th 1275.

[8] In **In re Marriage of F.M. & M.M. (2021),** the court underscored that domestic violence restraining orders under the Domestic Violence Prevention Act (DVPA) are meant to prevent future abuse, not to punish past conduct. The court emphasized the importance of considering evidence of post-filing abuse

Additionally, this Court cannot ignore Owens's documented record of dishonesty, forgery, and perjury (**See Judge Mata's Judicial Findings – Exhibit B**). Given this context, permitting Owens to avoid live testimony would be extraordinarily prejudicial. Her declarations, unchecked by immediate cross-examination would shield her from confronting demonstrable contradictions and fabrications. Moreover, given her OR conditions, Owens's ability even to physically appear at a hearing in California is doubtful without judicial authorization from Arizona, authorization that no responsible court would likely grant under these circumstances.

V. Motion to Seal Should be Denied.

Owens's bid to seal the proceedings conflicts with California's strong presumption of open courts, as court records and hearings are presumptively public under California law. California Rules of Court, Rule 2.550(c) explicitly states that court records are presumed open unless confidentiality is required by law. This principle is rooted in the public's First Amendment right to access court records, as articulated in *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1216-1218, and codified in Rules 2.550 and 2.551 Cal Rules of Court, Rule 2.550

Under Rule 2.550(d), a trial court may order a record sealed only if it makes express factual findings that: (1) there exists an overriding interest that overcomes the right of public access; (2) the overriding interest supports sealing the record; (3) a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest. These requirements ensure that sealing orders are narrowly tailored and supported by compelling reasons Cal Rules of Court, Rule 2.550, Mercury Interactive Corp. v. Klein, 158 Cal. App. 4th 60, In re Marriage of Tamir, 72 Cal. App. 5th 1068.

These stringent requirements codify constitutional standards and make clear that sealing is *the rare exception*, not the rule. Petitioner has not come close to meeting this heavy burden. She identifies no *"overriding interest"* sufficient to overcome the fundamental presumption of

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and ensuring that the orders are based on reasonable proof of ongoing or future threats, rather than being used as a tool for other purposes

open access. Her claimed basis for secrecy is not the protection of any legitimate privacy interest, but rather an effort to shield herself from public scrutiny, avoid embarrassment from challenges to her credibility, and prevent the public from observing her ongoing criminal conduct. Avoiding personal embarrassment and reputational damage while concealing criminal conduct is not a valid ground for sealing under California law.

Owen's has actively publicized the very allegations at issue in this case. By her own account, Petitioner has openly discussed her relationship and abuse claims in public forums, including a TEDx talk in January 2022 describing how a note from a stranger prompted her to leave an "abusive" boyfriend (a reference to Respondent). She has published essays and made media appearances touting her status as a domestic violence "survivor," voluntarily disclosing details of the alleged abuse. She also initiated prior litigation in 2018 (a domestic violence restraining order case) based on these allegations, which was heard in open court and resulted in public court records. Having freely injected her story into the public sphere, Petitioner cannot now credibly claim a *compelling privacy interest* in shielding the same narrative from public view.

Owens has painted Respondent as an abuser in the court of public opinion, through interviews, online posts, and public talks. Yet she now seeks to close the courtroom doors and keep the actual evidence and testimony hidden from the same public. This one-sided use of secrecy would severely hamper Respondent's ability to clear his name. Fundamental fairness dictates that Respondent be allowed to rebut Petitioner's allegations in an open forum, so that the truth can emerge. The California Rules recognize that transparency is crucial not only for public confidence in the courts, but also for the integrity of the fact-finding process. Petitioner's attempt to seal the record is an effort to **control the narrative** and avoid having her claims tested under the glare of public scrutiny. The Court should emphatically reject this request.

VI. Relief Requested: Evidentiary Hearing, Sanctions for Bad Faith, and Referral for Criminal Investigation

1. **Deny Petitioner's Motion to Proceed by Declaration**, and Order that the Hearing Go Forward with Live Testimony after proper service has been effectuated. Both parties (and any

other permitted witnesses) should be ordered to testify under oath, subject to cross-examination.

2. **Deny Petitioner's Motion to Seal** - Petitioner has not met the stringent criteria of Rules 2.550 and 2.551, and the First Amendment and common law rights of public access would be unjustifiably infringed by the blanket secrecy she seeks.

3. **Impose Sanctions on Petitioner** for Bad-Faith Litigation Conduct (Family Code § 271). Owens's litigation tactics, including failing to serve her opponent, attempting to mislead the Court, and persisting in claims known to be false, have needlessly increased the cost of this litigation and undermined the policy of cooperative resolution.

4. **Refer Petitioner's Conduct to the District Attorney** for Possible Criminal Investigation. The evidence before this Court suggests that Owens's actions are not merely civilly actionable, but criminal. The Court should consider making a formal referral or recommendation to the San Francisco District Attorney's Office to investigate Owens for perjury (Penal Code § 118), offering false evidence (Penal Code § 132), and witness intimidation (Penal Code § 136.1), among any other applicable offenses.

Conclusion

Respondent Michael Marraccini respectfully urges the Court to deny Petitioner's motion to proceed by declaration and to order that the matter proceed with live testimony pursuant to Family Code § 217. Furthermore, Respondent asks the Court to send a clear message by imposing sanctions on Owens for her bad-faith litigation conduct and by referring the evidence of her perjury and intimidation attempts to the District Attorney. Owens's ongoing, insidious manipulation of legal processes must end.

Dated: August 25, 2025

Respectfully Submitted,

Omar R. Serrato
Attorney for Respondent, Michael Marraccini

EXHIBIT A

Clerk of the Superior Court
*** Electronically Filed ***
06/18/2024 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114 06/17/2024

HONORABLE JULIE ANN MATA

CLERK OF THE COURT
L. Overton
Deputy

IN RE THE MATTER OF
LAURA OWENS

DAVID S GINGRAS

AND

CLAYTON ECHARD

GREGG R WOODNICK

DEANDRA ARENA
JUDGE MATA
MARICOPA COUNTY ATTORNEY'S OFFICE
225 W MADISON ST
PHOENIX AZ 85003

UNDER ADVISEMENT RULING

An in-person Evidentiary Hearing was held on June 10, 2024, regarding the issues of sanctions, paternity, attorney's fees, and costs.

JURISDICTIONAL FINDINGS

THE COURT FINDS at the time this action was commenced at least one of the parties was domiciled in the State of Arizona and that said domicile had been maintained for at least 90 days prior to filing the Petition. There are no minor children common to the parties.

PROCEDURAL HISTORY

- Laura Owens ("Petitioner") filed a pro per Petition to Establish Paternity, Legal Decision Making, Parenting Time and Child Support on May 20, 2023.
- Petitioner filed a pro per Motion to Communicate on August 23, 2023, a Motion to Compel on August 29, 2023, and Expedited Consideration Requested! Motion to Communicate filed September 14, 2023, and Expedited (!) Motion to Seal Court Record on September 14, 2023. All motions were denied.
- Clayton Echard ("Respondent") filed a pro per Answer on August 21, 2023. The Court granted Respondent's Motion for Leave to Amend Response filed by counsel on December 12, 2023, and Amended Response to Petition to Establish filed on January 26, 2024.
- The parties attended an Early Resolution Conference on September 28, 2023, wherein the parties entered into a Rule 69 agreement to comply with a Ravgen DNA test on October 2, 2023.
- On October 6, 2023, Petitioner filed for an ex parte Order of Protection ("OOP") in FC2023-052771. After a hearing, the OOP was affirmed. The same day the Ravgen results indicated "little to no fetal DNA."
- On October 18, 2023, Petitioner filed a Request for Pre-Decree Mediation citing Respondent's unwillingness to communicate with Petitioner and citing "he even acts as if the unborn children don't exist despite a pro ponderous of the evidence [sic]". (Dkt. No. 23, p. 2).
- On October 24, 2023, the parties appeared before Commissioner Gialketsis (retired) in CV2023-053952 in response to the Injunction Against Harassment ("IAH") filed by Respondent. On the parties' stipulation, the Court previously reviewed both days of the hearing and identified that the Petitioner, appearing virtually, frequently stood up and rubbed what appeared to be a swollen abdomen. November 2, 2023, testimony resumed, and Petitioner testified that she was "100%" and "24 weeks" pregnant with Respondent's children. She further testified that the twins were due on February 14, 2024. She further testified that due to epilepsy she was experiencing a high-risk pregnancy and was being cared for by two specialists, namely Dr. Makhoul and Dr. Higley. She testified she last saw Dr. Higley "last Friday" prior to the November 2, 2023, hearing.
- October 25, 2023, the parties appeared before Commissioner Doody to determine the validity of the contested OOP in FC2023-052771. Petitioner's abdomen again appeared swollen. During this hearing, she testified to the validity of the sonogram sent to Respondent, the media, and a Dropbox on Reddit, and further testified the parties were having a son. She later testified she believed she was having fraternal twins, one boy and one girl.

- December 6, 2023, a second Ravgen test confirmed "little to no fetal DNA."
- A third test was done; however, the test results were lost in transit.
- December 12, 2023, Respondent filed a Notice of Filing Affidavit of Non-Paternity.
- December 28, 2023, Petitioner filed a Motion to Dismiss Petition to Establish Paternity, Legal Decision Making, Parenting Time and Child Support with Prejudice in conjunction with a Notice Requiring Strict Compliance with Arizona Rules of Evidence, thereby invoking A.R.F.L.P. Rule 2(a). Petitioner cited the basis for the dismissal that she "is not now pregnant with Respondent's children." (Dkt. No. 32 at 1). The motion was denied as the issue of attorney's fees, costs, and sanctions remained.
- January 2, 2024, Petitioner filed an Expedited Motion to Quash Deposition of Petitioner. January 3, 2024, Respondent filed a Response/Objection to Petitioner's Motion to Dismiss. The Court denied Petitioner's Motion to Quash.
- Respondent withdrew his Motion for Sanctions Pursuant to Rule 26, on January 3, 2024.
- Petitioner filed a Motion for Confidentiality and Preliminary Protective Order on January 18, 2024.
- Respondent participated in a deposition on February 2, 2024.
- At a Status Conference on February 21, 2024, Petitioner was ordered by this Court to comply with Rule 49 disclosure requirements. During the hearing, Petitioner's counsel advised that the Petitioner had miscarried sometime in September or October 2023.
- Petitioner was deposed on March 1, 2024.
- On June 3, 2024, Petitioner's prior counsel, filed Ethical Rule 3.3 Notice of Candor, wherein counsel advises the Court that statements made by counsel at the February 21, 2024, Status Conference were factually incorrect. Specifically, counsel stated "Ms. Owens has not lied in this case. She has not intentionally lied to the Court." (Dkt. No. 108 at 1). While counsel believed the statements to be accurate at the time, counsel later determined those statements were not true based on the Petitioner's deposition taken March 1, 2024. (*Id.* at 2-4).
- Voluminous additional pre-trial pleadings were filed by both parties. Those motions were ruled on separately, by minute entry, and the rulings are not relevant for purposes of this hearing.

FINDINGS OF FACT

Petitioner, Laura Owens

- Petitioner contacted Respondent through Linkedin.
- Petitioner and Respondent met on May 17, 2023, to locate potential investment properties in Scottsdale.
- Petitioner has a podcast, a real estate investing company, and buys and sells horses. (Ex. B. 49, p. 13, line 24-25).
- Between May 18-20, the parties viewed some properties in Scottsdale.
- On the evening of May 20, 2023, Respondent invited Petitioner over to his home, which she accepted.
- After Petitioner arrived, Respondent told her he was "high" on cannabis "gummies" and he offered one to her, which she accepted.
- During the late evening of May 20, 2023, and early morning of May 21, both parties agree that Petitioner performed oral sex on Respondent "to completion" twice.
- Petitioner testified she did not want to have sexual intercourse, but that Respondent "stuck it in" briefly.
- Petitioner's implication that Respondent initiated sexual intercourse without consent was not alleged initially in the court filings. It was not alleged until 2024. (Ex. B. 49, p. 67).
- At trial, Petitioner testified that the parties had sexual intercourse, and that it was rape.
- Petitioner testified Respondent was too high to remember sexual intercourse, due to his voluntary intoxication.
- Petitioner believes she became pregnant on May 20, 2023. She testified that after May 20, 2023, her menstrual period stopped and did not resume until November 2023.
- Petitioner has had PCOS since the age of seventeen and does not have regular periods. (Ex. A. 11).
- Petitioner has a history of epilepsy. (*Id.*).
- Petitioner testified she has been pregnant four times. Each time, the alleged father believed she fabricated the pregnancy, and doctored medical records.
- On May 24, 2023, Petitioner asked Respondent to prepare written purchase offers for two properties Petitioner wanted to purchase in Scottsdale – one was located at [redacted] in Scottsdale (offer amount was $425,000) and the other was located at [redacted] in Scottsdale (offer amount was $699,000).

- Petitioner asked Respondent, as her realtor, to prepare these purchase offers and to submit them to the seller or the seller's agent.
- Respondent prepared the purchase offers, which Petitioner signed on or around May 24, 2023, but Respondent never submitted them to the seller or the seller's agent.
- Petitioner later asked Respondent if he had heard anything from the seller in response to Laura's offers.
- Respondent advised he had not heard back from the seller.
- Petitioner testified that she advised the Real Estate Board and action was taken.
- On May 31, 2023, Petitioner took a home pregnancy test which showed a faint positive result.
- Petitioner testified that after multiple positive pregnancy tests, she told the Respondent she was pregnant.
- Petitioner denies using hormones, someone else's urine, or altering the test at all.
- Petitioner found Respondent's reaction to be hostile and dismissive.
- On June 1, 2023, Petitioner went to Banner Urgent Care at Greenway and 64th Street, she informed the nurse that she believed she may be pregnant, and she asked for a test to determine whether she was, in fact, pregnant. (Ex. A. 2).
- The test result from Banner Urgent Care was positive for pregnancy. (*Id.*).
- Petitioner testified that for more than six months prior to May 2023, she was not sexually active with any other men. Based on this, Petitioner testified that she believed she was pregnant, and Respondent was the only potential father.
- June 19, 2023, Petitioner went to Respondent's home at his request.
- Respondent provided a pregnancy test for Petitioner to take. Conflicting testimony makes it difficult to ascertain whether the test was taken in front of the Respondent or with the bathroom door closed due to a shy bladder. Both parties agree the test was positive.
- In the "Something to Consider" email the Court finds the language to imply Respondent was attempting to buy into the idea that rubbing or grinding their genitals together might have led to a pregnancy. (Ex. A. 2). The Court, however, does not find the email conclusive that Respondent believed her to be pregnant with his children, but rather an attempt to consider her ascertains.
- In the "Something to Consider" email Respondent maintains that the lack of sexual intercourse would preclude him from being the father of the fetuses. The email does not deny the pregnancy test was positive. (Ex. A. 2).
- In the email, Respondent suggested that the positive test was the result of Petitioner's epilepsy medication.

- Petitioner emailed Dr. Glynnis Zieman, MD from Barrow Concussion & Brain Injury Center on June 28, 2023. (Ex. A. 3). The subject of the email is "Pregnancy and Seizure Med?" (*Id.*).
- Petitioner denies sending Respondent an ultrasound video, citing instead that Greg Gillespie hacked into her email and sent the video to Respondent. (Ex. A. 5) (Ex. B. 49, p. 64).
- Petitioner testified that July 2, 2023, she anonymously sought care at a Planned Parenthood in Los Angeles. While she failed to provide records of any Planned Parenthood appointment, anonymous or under an alias, Respondent presumably sought records from all Mission Viejo Planned Parenthoods as that is where, up until today, Petitioner disclosed she sought care. (Ex. B. 49, p. 81, line 4). Petitioner testified that she had the sonogram at a Planned Parenthood in California either anonymously or under a pseudonym and changed the location to prevent Respondent from tracking down the records. The Court was not provided with those records at trial.
- Petitioner testified that on July 23, 2023, she experienced bleeding and passed two small fleshy objects smaller in size than her hand. She took pictures of the tissue and sought telehealth assistance.
- Petitioner testified that she texted a miscarriage hotline and sought telehealth assistance.
- The telehealth provider told Petitioner it was hard to tell if she miscarried and she should monitor the situation and seek further care as needed. Petitioner chose not to seek in person care that would have confirmed if she had been, still was, or had miscarried. The Court finds the "hard to tell" component of the telehealth visit was due to the nature of telehealth and the inability to provide care in the form of an exam, hCG test, blood test, ultrasound, or sonogram.
- Instead of seeking in-person care, Petitioner chose to take another hCG home pregnancy test on July 25, 2023, which was positive.
- Petitioner again took an at home test instead of seeking care on August 1, 2023.
- Petitioner testified that she made multiple appointments to see Dr. Makhoul. Three of the four appointments were rescheduled and then cancelled when the Petitioner tested positive for COVID. Dr. Makhoul's records indicate forty-four pages of records confirming making and cancelling appointments.
- The Court was not provided with evidence of the positive COVID test but maintains that the nature of her high-risk pregnancy would warrant a visit to the emergency room who would be equipped to care for a high-risk pregnancy wherein the Mother was COVID positive.

- In August 2023, the parties agreed to a DNA test through Ravgen.
- Petitioner paid $725 to Ravgen for the test, but Respondent failed to provide a sample and Petitioner canceled the test on August 18, 2023. (Ex. A. 5).
- The Court does not find the sexual contact between Petitioner and Respondent resulted in a pregnancy.
- The Court finds that if the Petitioner was pregnant, it is profoundly unlikely that conception occurred because of rubbing, grinding, or oral sex.
- During this litigation, if Petitioner had maintained consistently an allegation of sexual assault, coupled with a police report, or physical exam, the Court may find differently. Evidence and testimony, however, do not support this inconsistent contention.
- Petitioner admitted to changing an hCG test result to reflect 31,000. (Ex. B. 17). She further testified she altered the document using Adobe, but not Adobe Acrobat.
- In late September or early October, both parties submitted samples to Ravgen for DNA testing.
- October 16, 2023, the Petitioner's blood was drawn, and the results were hCG levels of 102. (Ex. A. 9). Petitioner changed the results to reflect 102,000.
- Petitioner testified that on October 18, 2023, she was aware the alleged pregnancies were not viable and filed the Request for Pre-Decree Mediation in the hopes that at mediation she could tell the Respondent that the pregnancy was no longer viable.
- Upon denial of her Request, however, she did not file a Motion to Dismiss or make other arrangements to advise Respondent of the development.
- The Court finds this testimony uncredible and a misuse of judicial resources.
- Petitioner was not treated by Dr. Makhoul, or Dr. Higley as testified to in her November 2, 2023, hearing on the IAH.
- Petitioner's alleged pregnancy was not treated by Dr. Makhoul, Dr. Higley, or any other in-person obstetrician or gynecologist.
- The Court finds failure to seek in person care for a high-risk pregnancy to be both unreasonable and uncreditable.
- The Court further finds that going to Banner for a pregnancy test, but not the passage of fetal tissue to be unreasonable and uncredible. A reasonable person, if seeking emergency room care to confirm a pregnancy, would not rely on telehealth to confirm the non-viability of the pregnancies.
- Petitioner testified that on November 14, 2023, she sought OB/GYN services from a facility, MomDoc, to determine whether she was allegedly still pregnant.

(Ex. A. 11). At that appointment, Petitioner took two pregnancy tests that were both negative.

- Petitioner testified that she currently weighs 91 pounds but weighed 133 in November 2023, during her MomDoc appointment. She experienced significant swelling in her abdomen and felt pregnant.
- The Court was presented with videos dated September 19, 2023, and October 9, 2023, Petitioner sent Respondent of her abdomen as evidence of pregnancy. (Ex. A. 6, 7). Dr. Medchill testified that while she appeared pregnant, that alone was not conclusive of pregnancy.
- Petitioner denies tampering with hCG tests but does admit to altering and fabricating ultrasounds and sonograms. She further testified that she changed the hCG numbers on two of the results. The Court finds little, if any difference, in altering the test itself for which she denies, and altering the results which she did tamper with by her own admission.
- During Petitioner's cross-examination, it became profoundly obvious that counsel for the Petitioner was attempting to coach her answers.
- Respondent's counsel, identifying the issue, moved between counsel and the Petitioner.
- From that point forward, the Petitioner began to exhibit extreme anxiety and unwillingness to answer questions.
- The Court had to remind the Petitioner twice that counsel would ask a question and she needed to answer it.
- At this time, Petitioner pushed back her chair and advised the Court she did not believe she was being treated fairly. The Court attempted to redirect Petitioner to no avail.
- At this time, Petitioner became emotional and asked for a brief recess, which the Court granted.
- The Court finds this interaction between counsel and Petitioner, diminishes the creditability and veracity of the Petitioner's responses during cross-examination.
- The Court finds it is impossible to determine the date of any alleged miscarriage, not because it is impossible, but rather because she failed to seek even a minimal level of care for her high-risk condition. Failure to demonstrate confirmation of ongoing pregnancy is a purposeful way to ensure Respondent would not be able to determine if she was pregnant and if so, for how long the pregnancy lasted.

Michael T. Medchill, MD

- Dr. Michael T. Medchill, MD, a retired OB/GYN and prior Chair at St. Joseph's Hospital, testified that pregnancy is possible without sexual intercourse. Dr. Medchill testified that he delivered 30,000 babies during his practice and saw many patients for miscarriages.
- Dr. Medchill testified that he reviewed approximately 200 pages of Petitioner's medical records from Barrow Neurological Institute in Phoenix that included summaries of Petitioner's medications. He did not, however, review primary care or historical OB/GYN records.
- Dr. Medchill testified that none of the medication records he reviewed would cause a false positive home pregnancy test.
- Dr. Medchill testified that a false positive hCG test could be the result of epilepsy medication, anxiety medication, Clozapine, horse urine, or IVF prescribed injections ("trigger shots").
- When asked by the Court, Dr. Medchill testified he did not review any Planned Parenthood records from Mission Veijo or Los Angeles facilities.
- Dr. Medchill testified that a home pregnancy can detect pregnancy eleven days after conception.
- Dr. Medchill testified that he is 99.9% sure that the Petitioner was pregnant based on the hCG tests. He did not change his perspective after Petitioner's admissions on the stand that she altered more than one test to reflect higher, viable hCG numbers.
- The Court finds Dr. Medchill's testimony that .1% chance that Petitioner received a false positive due to several medications she is in fact taking, possible trigger shot for hCG, and a prior history of ovarian cancer to dimmish his creditability. Especially given that records that the Petitioner testified existed were not presented to her own expert for review and consideration.
- Dr. Medchill testified that a blood hCG level of 102 is proof of a non-viable pregnancy. While Dr. Medchill testified that a non-viable pregnancy is still a pregnancy, the Court finds that altering the number to reflect 102,000 which would be a viable pregnancy to indicate that she intended for the Respondent to believe that she was still pregnant with viable fetuses.
- Dr. Medchill concluded that the Petitioner became pregnant on May 20, 2023, and ended with a "spontaneous abortion" late October, early November, or possibly sooner in 2023. Given the alterations of the only records to indicate pregnancy the Court does not accept this conclusion.
- Dr. Medchill testified that woman may expel tissue during a spontaneous abortion, or the pregnancy might remain in her body, ultimately being reabsorbed.

Given that the Petitioner testified under oath at a prior hearing that she was absolutely twenty-four weeks pregnant and had seen her doctor (presumably in-person) the Court does not accept that twenty-four-week-old twin fetuses would be reabsorbed into a mother's body. The Court further finds a miscarriage at that stage of pregnancy would result in emergency medical care and corresponding death certificates of the twins. If what Dr. Medchill testified to is true, and she miscarried much sooner, negating the need for the death certificates, then Petitioner perjured herself at a prior hearing.

Samantha Deans, MD, MPH

- Dr. Samantha Deans, MD, MPH, reviewed Petitioner's records and provided her analysis of the hCG results. (Ex. B. 39, 41). Additionally, she was the prior Associate Medical Director of Planned Parenthood in Florida, and Pennsylvania.
- She testified that Planned Parenthood does not accept anonymous patients. They do not accept patients using an alias. Patients are required to provide a government issued form of identification. She further testified that Planned Parenthood is not open on Sundays, when Petitioner testified, she sought care July 2, 2023.
- Dr. Deans testified that hCG does not confirm pregnancy. There must be serial hCG or an ultrasound and examination, which were never done, or never disclosed to the Court, the Respondent, Dr. Medchill or Dr. Deans.
- Dr. Deans reviewed the July 23, 2023, telehealth instructions that Petitioner "proceed to an emergency room for additional evaluation and care." (Ex. B. 41, p. CE0527). The instructions were not followed but Petitioner called the Abortion and Miscarriage Hotline which also recommended and encouraged the Petitioner to seek in-person medical care. (*Id.*).
- Dr. Deans testified that there is no data to indicate a conception date.
- After reviewing the records, Dr. Deans determined that the hCG tests were never dispositive of pregnancy and that the related miscarriage timeline, which included detailed analysis of the likely origin of hCG in Petitioner's blood and urine was not indicative of human gestational norms.
- Dr. Deans testified that heterophilic autoimmune responses due to exposure to animals could produce a positive hCG test, but the confirmation blood test would be negative.
- A prior history of cancer could also produce a positive hCG result. Petitioner has a prior history of ovarian cancer that prompted the surgical removal of her right ovary.

- Familial hCG Syndrome can also produce a false positive hCG test. Dr. Deans testified that syndrome is very rare with only ten known cases in the world.
- Horse tranquilizers can create a positive hCG result.

Respondent, Clayton Echard

- Respondent denies all allegations of sexual intercourse.
- Respondent confirms both parties were under the influence of marijuana but denies being "high" and further denies memory loss because of the marijuana ingestion.
- Respondent testified that around May 22, 2023, he realized his behavior with Petitioner was unprofessional and he intended to discontinue a sexual relationship with the Petitioner. He testified that upon hearing this, the Petitioner became very emotional.
- Respondent testified that he told Petitioner he had submitted the offers to the seller. Respondent testified he did not believe the Petitioner was really interested in the properties.
- When asked if he had received any response, Respondent told Petitioner that he had not, but he never told Petitioner the reason why no response had been received – i.e., because the offers had never been submitted.
- Respondent made knowingly false statements to Laura about the real estate purchase offers.
- Respondent testified that Petitioner sent him approximately 500 texts message using thirteen different phone numbers threatening to leak information to the media. (Ex. B. 3).
- Respondent testified that Petitioner reached out to "The Sun," called his family, co-workers, and prior girlfriends accusing him of being a deadbeat for not supporting her and the twins.
- Respondent testified that he received the video from Petitioner and continued to correspond with her over that email string which would reasonably prompt Petitioner to advise she did not send the video, but she did not advise of that at the time. (Ex. B. 11).
- Petitioner emailed Respondent "[y]ou can't say you haven't been given a voice when I have told you that I will have an abortion if we try things out for a few weeks and have a good reason for aborting the child…[t]hese words feel menacing because you know I like you and want to try things out with you." (Ex. B. 7). The email continues "[y]ou would be 'obliging' to make the decision to date exclusively before deciding whether or not we have an abortion." (*Id.*).

- Petitioner encouraged Respondent to have sexual intercourse with her, citing she was "tight" and already pregnant.
- Petitioner further emailed Respondent that he had control of the outcome of the pregnancy "if we date exclusively and care for each other." (Ex. B. 6). On June 28, 2023, she said "[i]f you think about it, having sex with me is the safest thing you can do at this point. I'm already pregnant and if we choose to go this route (and trust each other enough to have sex), then we are at the point where I would be taking abortion pills…so there's no risk." (*Id.*).
- Petitioner told Respondent the twins were a boy and a girl.
- Petitioner provided Respondent with a sonogram that was posted on YouTube seven years ago. Petitioner admitted to this during her deposition (Ex. A. 28).
- Petitioner sent a threatening letter to Respondent indicating her intention to sue him for 1.4 million dollars in collateral allegations unless he agreed to dismiss this action that she initiated. (Ex. B. 55).
- Petitioner signed a release of records for Dr. Jeffrey Blake Higley, MD at Women's Care. In a letter dated March 18, 2024, the provider advised "[w]e have no record of treatment for the date(s) of service you request." (Ex. B. 59, p. OWENS 2).

VALIDITY OF PETITIONER'S ORDER OF PROTECTION

In this case, the gravamen of Respondent's position is that Petitioner has fabricated her pregnancy, a condition which cannot have resulted from the parties' interactions, because according to Respondent they never had sexual intercourse. But he does admit that the pair engaged in oral sex. Respondent seeks to have the protective order invalidated based on the alleged fabrication, while Petitioner essentially argues that even if she was never pregnant, the sexual activity between the two, and Respondent's subsequent harassing online conduct, are sufficient to sustain the order regardless.

There is a predicate issue that should be addressed which goes to the Court's authority to reconsider the protective order at all. Put simply, extant appellate authority, namely *Vera v. Rogers*, 246 Ariz. 30 (Ct. App. 2018) and like cases, precludes reconsideration here.

In *Vera*, Mother applied for a protective order in Phoenix Municipal Court, but it was eventually transferred to the superior court after Father petitioned to establish legal decision-making authority, parenting time, and child support here. After a contested hearing, the commissioner handling the order of protection affirmed it in its entirety. Father then filed a

special action, asking the court of appeals to order the family court to amend the order of protection to align it with the temporary parenting-time orders it had made in the separate case. The court of appeals accepted the special action, finding it raised a "purely legal issue of first impression that is of statewide importance," to wit, "the interplay between the procedural rules and statutes governing protective orders and family law proceedings." (*Id*. at 33).

The court of appeals first recognized that the superior court, pursuant to ARFLP 5(A), has the authority to hold a joint hearing to concurrently consider both actions so that it may harmonize the orders. But having said that, the court noted that the superior court's "authority to modify an order of protection only exists pursuant to the statutes and rules controlling protective orders." (*Id*. at 34). And those statutes and rules prevented the relief Father sought in *Vera*, because another superior court officer had already affirmed the contested order of protection. Indeed, the court stated that "[o]nce [a contested] hearing has been held, an affirmed order of protection may be amended or dismissed only in two ways: (1) by a request of the party protected by the order, Ariz. R. Protect. Ord. P. 40(a),6 41(a); or (2) by appeal, Ariz. R. Protect. Ord. P. 42(a)(2), (b)." (*Id*. at 35). Because Mother had not requested amendment, and Father did not appeal from what amounted to a final judgment, he could not obtain relief, and the family court had no power to amend the protective order. Put another way, "a superior court judicial officer is not to engage in horizontal appellate review of another judicial officer's decision to affirm an order of protection." (*Id*. at 36; *see also Davis v. Davis*, 195 Ariz. 158, 161, ¶ 11) (App. 1999) (holding that "a superior court judge has no jurisdiction to review or change the judgment of another superior court judge when the judgment has become final").

Just like in *Vera*, absent a move by Petitioner to modify or dismiss the protective order, Respondent's "sole remedy was to appeal" the final ruling affirming it after the contested hearing. (*Id*. at 36). Although *Vera* did not involve fraud, this Court was unable to identify any cases collaterally challenging a final protective order judgment on Rule 85 grounds in a separate family court proceeding, nor any authority suggesting that *Vera*'s exclusive roadmap (which is rooted in ARPOP 40 & 41) for amending or dismissing a final order of protection judgment is subject to an exception based on Rule 85 review. This Court's power to invalidate the order is foreclosed by *Vera*.

Even if *Vera* did not foreclose this Court's review, Respondent cannot prevail here (despite what appears to be a case of serial fabrications here and elsewhere by Petitioner). Under A.R.S. § 13-3601(A)(6), the parties admittedly had a relationship that was "previously . . . romantic or sexual," however fleeting it might have been. Petitioner thus had a statutory avenue to seek a protective order, regardless of whether she fabricated her pregnancy. Moreover, Commissioner Doody did not issue the order based solely, or even primarily, on the "fact" of

Petitioner's pregnancy. Indeed, his initial order required that Respondent not contact Petitioner or "communicate or post untrue or harassing comments regarding Plaintiff online, including but not limited to social media, and shall not cause others to" do the same. (Dkt. No. 3, Case No. 2023-052771 filed October 6, 2023). Moreover, Petitioner's initial Petition referenced a myriad of communications Respondent made to her that could be deemed threatening per the statutory guidelines and appears to have prompted Commissioner Doody to confirm the order after the hearing. Thus, even if Petitioner's broader pregnancy allegations are proven untrue, one aspect of the court's order indicated that it found Respondent had engaged in harassing conduct, so even on the merits there is no cause to invalidate the final judgment.

Vera v. Rogers forecloses not only reviewing the orders in principle but also prevents tinkering at the margins as well. If the superior court cannot "engage in horizontal appellate review of another judicial officer's decision to affirm an order of protection," 246 Ariz. at 36, there is no way that the Court can otherwise review portions of those decisions piecemeal either. The parties' remedies as to both decisions were to appeal and have the appellate court review the entirety of those decisions. Both had hearings as to their respective orders, and under ARPOP 42(a)(2), "[a]n Order of Protection, an Injunction Against Harassment, or an Injunction Against Workplace Harassment that is entered, affirmed, modified, or quashed after a hearing at which both parties had an opportunity to appear" is appealable.

SANCTIONS

ARFLP 26(b) provides that "by signing a pleading, motion or other document, the attorney or party certifies to the best of the person's knowledge, information, and belief formed after reasonable inquiry: (1) it is not being presented for any improper purposes, such as to harass . . . (2) the claims, defenses, and other legal contentions are warranted by existing law . . . (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery . . . ." Meanwhile, Rule 26(c) provides that "if a pleading, motion, or other document is signed in violation of this rule, the court—on motion *or on its own*—may impose on the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney fee." (emphasis added).

In this case, Respondent filed a Motion for Sanctions Pursuant to Rule 26 on January 3, 2024, arguing that "Petitioner filed the underlying action for an improper purpose without medical evidence to support her claim that she was pregnant and/or that she was pregnant by Respondent." (Dkt. No. 40 at 1). However, after significant motion practice between the parties'

attorneys, Respondent filed a Motion to Withdraw Motions for Sanctions Pursuant to Rule 26 on April 3, 2024, while retaining his other claims under A.R.S. §§ 25-324, 25-415, 25-809. (Dkt. No. 76). The question thus becomes, can the court still award Rule 26 sanctions, considering Respondent's withdrawal of his motion.

As already noted above, ARFLP 26(c) expressly provides that the court can sanction a party for a violation "on its own." The Court was unable to locate any decisions pertaining to whether the withdrawal of a party's Rule 26 sanctions motion precludes a *sua sponte* court award. But, as a matter of plain meaning and strict interpretation, it would seem not to matter whether a party ever files a motion or even whether that party does file a motion and then withdraws it—a court may still award the sanctions it deems appropriate, based on the conduct it deems to violate the rule. Indeed, if per Rule 26(c) the court can at any time award sanctions of its own accord and on its own findings, absent invitation, the withdrawal of a party's motion to do so would not seem to vitiate or in any way affect that power, as a matter of plain logic. So, for instance, if the Court were to here find that Petitioner fabricated her pregnancy to provide leverage against Respondent in order to secure a long-term relationship with him and all its attendant benefits, Rule 26(c) would appear without doubt to provide it the authority to "order [her] to pay [Respondent his] reasonable expenses . . . including a reasonable attorney fee," regardless of any prior filings by the parties. That is because that fabrication, if adjudicated as such, would have been the predicate for her initial petition and many, indeed all, of the motions that came after it.

Although there is a dearth of case law on this issue, other rules confirm that the family court has the authority to award sanctions on its own. Rule ARFLP 76.2(a)(1), for instance, provides that "[i]n a pre-judgment or post-judgment proceeding, the court upon motion *or its own initiative* may impose sanctions if a party or attorney: (1) fails to obey a scheduling or pretrial order; (2) fails to appear at a Resolution Management Conference, a scheduling conference, an evidentiary hearing, a trial, or other scheduled hearing; (3) is substantially unprepared to participate in a conference, hearing or trial; (4) fails to participate in good faith in a conference, hearing, or trial, or in preparing a resolution statement, scheduling statement, or pretrial statement." (emphasis added). And the remedies available include, in addition to substantive sanctions, ordering the party at fault "to pay reasonable expenses--including attorney fees, an assessment to the clerk, or both--caused by any noncompliance with a court order." ARFLP 76.2(c); *see also Hamby v. Hamby*, No. 1 CA-CV 19-0498 FC, 2020 WL 4717115, at *2 (Ariz. Ct. App. Aug. 13, 2020) (confirming power of court to award sanctions on its own initiative under ARFLP 76). Rule 71 provides for a similar power in the settlement and ADR context.

Additionally, as is evident from their near textual identicality, and per the *Arizona Family Law Rules Handbook*, "ARFLP 26 is based on [Arizona Rule of Civil Procedure] 11." 3 Comparison with Civil Rules, 13 Ariz. Prac., *Family Law Rules Handbook* Rule 26. And Rule 11 also expressly provides that in the event of a violation "the court—on motion or on its own—may impose on the person who signed it, a represented party, or both, an appropriate sanction." And in the Rule 11 context, the Court of Appeals has concluded that a trial court may impose sanctions even after a complaint has been dismissed for lack of prosecution. *See Britt v. Steffen*, 220 Ariz. 265 (App. Div.1 2008). This lends credence to the idea that the family court's inherent authority to award sanctions under ARFLP 26 should not be read to be limited by the course of the case or by the litigation strategy pursued by the parties. The power is there by rule and can be used by the court when necessary and appropriate.

NON-PATERNITY

A.R.S. § 25-814(A)(2) provides a man is presumed to be the father of a child if "[g]enetic testing affirms at least a ninety-five percent probability of paternity." A.R.S. § 25-814 (C) provides a man is presumed to be the father based on DNA testing, that may only be rebutted by clear and convincing evidence. Based on a lack of confirmed pregnancy and repetitive Ravgen results of "little to no fetal DNA" the Court cannot establish that Petitioner was pregnant. The Court cannot establish paternity of a nonconfirmed pregnancy lacking DNA evidence despite testing twice. Here, two test results of "little to no fetal DNA" fall woefully short of the 95% required to meet the burden of clear and convincing evidence that Respondent was the father of Petitioner's alleged pregnancy.

ATTORNEY FEES AND COSTS

Clayton Echard has requested an award of attorney fees and costs. An award of attorney fees and costs is governed by A.R.S. § 25-324. A.R.S. § 25-324 provides as follows:

> A. The court from time to time, after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceedings under this chapter or chapter 4, article 1 of this title. On request of a party or another court of competent jurisdiction, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The court may make these findings before, during

> or after the issuance of a fee award.
> B. If the court determines that a party filed a petition under one of the following circumstances, the court shall award reasonable costs and attorney fees to the other party:
>
> 1. The petition was not filed in good faith.
> 2. The petition was not grounded in fact or based on law.
> 3. The petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party.
>
> C. For the purpose of this section, costs and expenses may include attorney fees, deposition costs and other reasonableness expenses as the court finds necessary to the full and proper presentation of the action, including any appeal.
> D. The court may order all amounts paid directly to the attorney, who may enforce the order in the attorney's name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

THE COURT FINDS there is no substantial disparity of financial resources between the parties. Petitioner did not provide an AFI but testified she and her mother collectively earn $200,000 a year. Respondent filed an AFI on May 15, 2024, citing monthly income of $12,000, and annual income of $144,000.

THE COURT FURTHER FINDS that Petitioner acted unreasonably in the litigation. Specifically, Petitioner acted unreasonably when she initiated litigation without basis or merit. Without an authentic ultrasound, sonogram, physical examination, and in conjunction with a belief she passed tissue in July 2023, the Court finds the underlying Petition premature at best. At worst, however, fraudulent and made to incite communication, a relationship, or both, with the Respondent. The Court further finds that filing a motion seeking mediation for the purpose of telling the Respondent that the pregnancies were not viable disingenuous at best but certainly misleading to the Court. If the purpose of the motion was in fact to attend mediation, then the Petitioner perjured herself today when she said the purpose of the mediation was to tell the Respondent about the miscarriage. Either way, Respondent likely incurred costs associated with this litigation prior to retaining counsel and he is entitled to reimbursement for those costs.

THE COURT FURTHER FINDS that Petitioner repetitively failed to comply with Rule 49, even on Order of this Court. Further compounded by the fact that on the day of trial, she testified that she anonymously sought care at a Planned Parenthood in Los Angeles. While she failed to provide records of any Planned Parenthood appointment, anonymous or under an alias, Respondent presumably sought records from all Mission Viejo Planned Parenthoods as that

is where, up until today, Petitioner disclosed she sought care. This undoubtably, caused Respondent to incur substantial legal fees attempting to locate records that may, or may not exist in Los Angeles but now appear to have never existed in Mission Viejo. Additionally, Petitioner acknowledged she altered hCG test results, an ultrasound and sonogram.

THE COURT FURTHER FINDS that the provisions of A.R.S. § 25-324(B) do apply because the petition was not filed in good faith, the petition was not grounded in fact or based on law, the petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party. Here, the Court finds Petitioner provided false testimony as to the viability of the pregnancy in all three cases addressed in the procedural history. Additionally, prior to her deposition, Petitioner sent a threatening letter to Respondent indicating her intention to sue him for 1.4 million dollars in collateral allegations unless he agreed to dismiss this action that she initiated.

THE COURT FURTHER FINDS that Laura Owens knowingly presented a false claim, knowingly violated a court order compelling disclosure or discovery such that an award of attorney fees and costs is appropriate under A.R.S. § 25-415.

IT IS THEREFORE ORDERED granting Clayton Echard's request for attorney fees and costs associated with FC2023-052114.

IT IS FURTHER ORDERED denying Clayton Echard's request for attorney fees and costs associated with the OOP and IAH hearings referencing the analysis above.

IT IS FURTHER ORDERED that Laura Owens shall pay Clayton Echard's reasonable attorney fees and costs. Not later than July 8, 2024, Respondent and counsel for Clayton Echard shall submit all necessary and appropriate documentation to support an application for an award of attorney fees and costs, including a *China Doll* Affidavit and a form of proposed order. By no later than July 29, 2024, Laura Owens shall file any written objection and a form of proposed order. If Clayton Echard's counsel fails to submit the documentation by July 8, 2024, no fees or costs will be awarded. The Court shall determine the award and enter judgment upon review of the Affidavit as well as any objections.

ADDITIONAL ORDERS

IT IS FURTHER ORDERED granting the Respondent's Petition for Non-Paternity.

IT IS FURTHER ORDERED, the Court having determined that Laura Owens has a pattern of similar, if not identical behavior, and court involvement, referring this matter to the Maricopa County Attorney's Office for review of Laura Owen's actions pursuant to A.R.S § 13-

2702 and A.R.S § 13-2809. Accordingly, the Maricopa County Attorney's Office will be endorsed on this Order.

The Court must decide the amount of attorney's fees and costs to be awarded but finds there is no just reason to delay making a final order.

IT IS THEREFORE ORDERED pursuant to Rule 78(b), Arizona Rules of Family Law Procedure, that this is a final judgment, and it shall be entered by the Clerk. The time for appeal begins upon entry of this judgment by the Clerk. For more information on appeals, see Rule 8 and other Arizona Rules of Civil Appellate Procedure.

IT IS FURTHER ORDERED denying any affirmative relief sought before the date of this Order that is not expressly granted above.

Done in open Court on: 06/17/2024

Julie Mata

HONORABLE Julie Mata

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: https://superiorcourt.maricopa.gov/llrc/fc_gn9/

EXHIBIT B

RACHEL H MITCHELL
MARICOPA COUNTY ATTORNEY

Edward Leiter
Deputy County Attorney
Bar ID #: 025593
225 W Madison St, 6th Floor
Phoenix, AZ 85003
Telephone: (602) 372-7016
sp2div@mcao.maricopa.gov
MCAO Firm #: 00032000
Attorney for Plaintiff

DR 2024031 - Maricopa County Attorney's Office
2109296

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs

LAURA MICHELLE OWENS,

Defendants.

CR 2025 006831 * 001

INDICTMENT
896 GJ 480

COUNT 1: FRAUDULENT SCHEMES AND ARTIFICES, A CLASS 2 FELONY (Laura Michelle Owens)
COUNT 2: FORGERY, A CLASS 4 FELONY (Laura Michelle Owens)
COUNT 3: PERJURY, A CLASS 4 FELONY (Laura Michelle Owens)
COUNT 4: PERJURY, A CLASS 4 FELONY (Laura Michelle Owens)
COUNT 5: PERJURY, A CLASS 4 FELONY (Laura Michelle Owens)
COUNT 6: PERJURY, A CLASS 4 FELONY (Laura Michelle Owens)

COUNT 7: TAMPERING WITH PHYSICAL EVIDENCE, A CLASS 6 FELONY (Laura Michelle Owens)

The Grand Jurors of Maricopa County, Arizona, accuse LAURA MICHELLE OWENS, on May 1, 2025, charging that in Maricopa County, Arizona:

COUNT 1

LAURA MICHELLE OWENS, on or between May 17, 2023 and June 10, 2024, pursuant to scheme or artifice to defraud, knowingly did obtain a benefit from Clayton Ray Echard, by means of fraudulent pretenses, representation, promises, or material omissions, in violation of A R S §§ 13-2310, 13-701, 13-702, and 13-801

COUNT 2:

LAURA MICHELLE OWENS, on or between June 27, 2023 and July 11, 2023, with intent to defraud, did falsely make, complete, or alter a written instrument, to-wit: Sonogram, in violation of A.R.S. §§ 13-2002, 13-2001, 13-701, 13-702, and 13-801.

COUNT 3

LAURA MICHELLE OWENS, on or about October 25, 2023, in regard to a material issue and believing it to be false, did make a false sworn statement, to-wit: Testifying in Front of Judge John Doody that she had not been intimate with anyone else since March 2022, in violation of A R S §§ 13-2701, 13-2702, 13-2706, 13-701, 13-702, and 13-801

COUNT 4.

LAURA MICHELLE OWENS, on or about March 1, 2024, in regard to a material issue and believing it to be false, did make a false sworn statement, to-wit: Claiming that Sonogram image was hers during sworn deposition, in violation of A R S §§ 13-2701, 13-2702, 13-2706, 13-701, 13-702, and 13-801

COUNT 5:

LAURA MICHELLE OWENS, on or about March 1, 2024, in regard to a material issue and believing it to be false, did make a false sworn statement, to-wit. video clip of father touching pregnant belly, in violation of A R.S §§ 13-2701, 13-2702, 13-2706, 13-701, 13-702, and 13-801

COUNT 6:

LAURA MICHELLE OWENS, on or about June 10, 2024, in regard to a material issue and believing it to be false, did make a false sworn statement, to-wit: Claiming, "That's me showing my pregnant stomach", in violation of A.R S §§ 13-2701, 13-2702, 13-2706, 13-701, 13-702, and 13-801

COUNT 7·

LAURA MICHELLE OWENS, on or about June 10, 2024, with intent that it be used, introduced, rejected or made unavailable in an official proceeding which was then pending or which LAURA MICHELLE OWENS knew was about to be instituted, did destroy, mutilate, alter, conceal or remove physical evidence, to-wit Exhibits A-6 and A-

7 used during June 10, 2024 hearing, with the intent to impair its verity or availability, in violation of A R.S §§ 13-2809, 13-2801, 13-701, 13-702, and 13-801.

TRUE BILL
("A True Bill")

RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY

Date. May 1, 2025

Edward Leiter
Deputy County Attorney
sk

FOREPERSON OF THE GRAND JURY

EXHIBIT C

P.O. Box 25538
Sacramento, California 95865-538

Name: Laura M Owens I DOB: 5/14/1990 I PCP: John Chung Kai Chan, MD

Re: Ovarian cancer (Owens)

To: Laura M Owens
From: John Chung Kai Chan, MD
Sent: 8/13/2016 6:37 AM PDT

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ear Laura,

hank you for your e-mail. I am sorry you are going through such a rough time right now and will do my best to help you rough it.

read the messages you sent me from your boyfriend and answer his questions. Stage IA is without a doubt considered be true cancer and something that we take very seriously. You are correct, Laura, that this cancer is found only in one vary. He is incorrect in his saying that this means you just 'might' have malignant cancer cells. Please tell him that yes, I ave diagnosed you with 'real' ovarian cancer, not something that just 'may' be there. I am not sure what is meant by the essage you forwarded that says I would only be diagnosing it if it were something other than stage IA. That is a very al stage and simply means it has not spread beyond your right ovary. I recommend looking at the American Cancer ociety's website page for more information.

addition, you can let him know that your diagnosis and treatment has been complicated by your pregnancy, which on its wn has been extremely difficult and unusual. I would strongly encourage him to change his attitude and support you at is time. I sincerely hope things get better.

l the best,
ohn Chung Kai Chan, MD

P.O. Box 25538
Sacramento, California 95865-538

Name: Laura M Owens I DOB: 5/14/1990 I PCP: John Chung Kai Chan, MD

/30 (Owens)

To: Laura M Owens
From: Rebecca Yee, MD
Sent: 8/31/2016 4:46 PM PDT

Ms. Owens,

Yesterday (8/30/16), you received ovary removal surgery (oophorectomy) of your right ovary as well as a surgical portion. Due to your recent medical history, I will wait to confirm pregnancy termination until blood work and a follow-up rasound are completed, although there were no complications during the procedure. As you explained to me, you have ready experienced emotional side effects such as extreme fatigue, depression, and mood swings. These are common nd I would ask your boyfriend to support your during recovery.

est regards,

ebecca Yee, MD

EXHIBIT D

Gregg R Woodnick, State Bar Number: 020736
Woodnick Law PLLC
[redacted]

Representing: Respondent

SUPERIOR COURT OF ARIZONA
IN MARICOPA COUNTY

In the matter of:

LAURA OWENS
Petitioner
vs.
CLAYTON ECHARD
Respondent

Case No.: FC2023-052114

SUBPOENA IN A FAMILY CASE

TO: MICHAEL MARACCINI
c/o Randy Sue Pollock, Attorney at Law
[redacted]

For Attendance of Witness at Hearing or Trial:

YOU ARE ORDERED TO APPEAR in the Superior Court of Arizona in Maricopa County at the place, date, and time specified below to testify at a trial in the above-named case, before:

Judicial Officer: The Honorable Julie Mata

Place: Northeast Regional Center
18380 N 40th St
Phoenix, AZ 85032
Room: 102

Date: 06/10/2024

Time: 8:45 AM Arizona Time

Your Duties In Responding To This Subpoena

ATTENDANCE AT A TRIAL: If this subpoena commands your attendance at a deposition, hearing, or trial, you must appear at the place, date and time designated in the subpoena unless you object (see below, procedures for objecting). Unless a court orders otherwise, you are required to travel to any part of the state to attend and give testimony at a trial.

ATTENDANCE AT A HEARING OR DEPOSITION: If this subpoena commands you to appear at a hearing or deposition, you must appear at the place, date and time designated in this subpoena unless either:

(1) you timely object (see below, the procedures for objecting); or

(2) you are not a party or a party's officer and this subpoena commands you to travel to a place other than:

(1) the county where you reside or you transact business in person; or

(2) the county in which you were served with the subpoena or within forty (40) miles from the place of service; or

(3) such other convenient place fixed by a court order.

PRODUCTION OF DOCUMENTARY EVIDENCE: If this subpoena commands you to produce and permit inspection, copying, testing or sampling of designated documents, electronically stored information, or tangible things, you must make the items available at the place, date and time designated in this subpoena, and in the case of electronically stored information, in the form or forms requested, unless you provide a good faith written objection to the party or attorney who served the subpoena. You may timely object to the production of documentary evidence (see below, the procedures for objecting).

You may object to the production of electronically stored information from sources that you identify as not reasonably accessible because of undue burden or expense, including sources that are unduly burdensome or expensive to access because of the past good-faith operation of an electronic information system or good faith or consistent application of a document retention policy.

If this subpoena does not specify a form for producing electronically stored information, you may produce it in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the responding person, but you need not produce the same electronically stored information in more than one form.

If the subpoena commands you to produce documents, you have the duty to produce the designated documents as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in the subpoena.

INSPECTION OF PREMISES: If this subpoena commands you to make certain premises available for inspection, you must make the designated premises available for inspection on the date and time designated in this subpoena unless you provide a timely, good faith written objection to the party or attorney who served the subpoena.

COMBINED SUBPOENA: You should note that a command to produce certain designated materials, or to permit the inspection of premises, may be combined with a command to appear at a trial, hearing or deposition.

You do not, however, need to appear in person at the place of production or inspection unless the subpoena also states that you must appear for and give testimony at a hearing, trial, or deposition.

Your Right To Object To This Subpoena

I. If you have concerns or questions about this subpoena, you should first contact the party or attorney who served the subpoena. The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The Superior Court enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached.

- You may object to this subpoena if you feel that you should not be required to respond. You must make any objection within 14 days after the subpoena is served upon you, or before the time specified for compliance, by providing a written objection to the party or attorney serving the subpoena. *
- If you object to the subpoena in writing, you do not need to comply with the subpoena until a court orders you to do so. It will be up to the party or attorney serving the subpoena to seek an order from the court to compel you to provide the documents or inspection requested, after providing notice to you. *

Unless otherwise ordered by the Court for good cause, the party seeking discovery from you must pay your reasonable expenses incurred in responding to a subpoena seeking the production of documents, electronically stored information, tangible things, or an inspection of premises.

- If you seek payment of expenses other than routine clerical and per-page costs as allowed by A.R.S. §12-351, you must object on the grounds of undue burden to producing the materials without the subpoenaing party's payment, and send an advanced estimate of those expenses to the subpoenaing party before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier. *
- You need not comply with those parts of the subpoena that are the subject of the objection, unless the Court orders you to do so. The court may enter an order conditioning your response to the subpoena on payment of your additional expenses, including ordering payment of those expenses in advance. *

II. PROCEDURE FOR OBJECTING TO A SUBPOENA FOR ATTENDANCE AT A HEARING, TRIAL OR DEPOSITION:

A. Form and Time for Objection.

(i) A person commanded to comply with a subpoena may object to the subpoena in writing on the basis that the information requested is not reasonably accessible or because complying with the subpoena would cause an undue burden or expense. The objection must state the basis for the objection, and must include the name, address, and telephone number of the person, or the person's attorney, serving the objection. The objection must be served on the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served,

whichever is earlier.

(ii) A person served with a subpoena that combines a command to produce materials or to permit inspection, with a command to attend a deposition, hearing, or trial, may object to any part of the subpoena. A person objecting to the part of a combined subpoena that commands attendance at a deposition, hearing, or trial must attend and testify at the date, time, and place specified in the subpoena, unless excused from doing so by the party or attorney serving a subpoena, by a court order, or by any other provision of Rule 52.

B. Procedure After Objecting.

(i) A person objecting to a subpoena to produce materials or to permit inspection need not comply with those parts of the subpoena that are the subject of the objection, unless ordered to do so by the issuing court.

(ii) The party serving the subpoena may move under Rule 65(a) to compel compliance with the subpoena. The motion must be served on the subpoenaed person and all other parties under Rule 43.

(iii) Any court order to compel must protect a person who is neither a party nor a party's officer from undue burden or expense resulting from compliance.

C. Claiming Privilege or Protection.

(i) A person withholding subpoenaed information under a claim that it is privileged or subject to protection as work-product material must promptly identify in writing the information, document, or electronically stored information withheld and describe it in a manner that, without revealing information that is privileged or protected, will enable other parties to assess the claim.

(ii) If information subject to a claim of privilege was accidentally produced in response to a subpoena, the party who accidentally produced the information may notify any other party that the information was privileged. After being notified of such a claim, a party who received the information has several obligations. They must promptly return, sequester, or destroy the information and any copies they have. They must not disclose the information until the claim is resolved, and if they have already disclosed it, they must take reasonable steps to retrieve the information. They must also present the information to the court under seal for a decision as to whether it is subject to privilege. The party who accidentally disclosed the information must preserve it until the privilege claim is resolved.

*See Arizona Rules of Family Law Procedure (A.R.F.L.P.) Rule 52, and the "Your Right to Object to this Subpoena" section.

III. COURT MODIFIES or VOIDS (quashes) CIVIL SUBPOENA

A. The court must quash or modify a subpoena if . . .

(1) the subpoena does not provide a reasonable time for compliance;

(2) unless the subpoena commands your attendance at a trial, if you are not a party or a party's officer and if the subpoena commands you to travel to a place other than:

a. the county in which you reside or transact business in person;

b. the county in which you were served with a subpoena, or within forty (40) miles from the place of service; or

c. such other convenient place fixed by a court order; or

(3) the subpoena requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(4) the subpoena subjects you to undue burden.

B. The court may quash or modify a subpoena if . . .

(1) the subpoena requires you to disclose a trade secret or other confidential research, development or commercial information;

(2) you are an unretained expert and the subpoena requires you to disclose your opinion or information resulting from your study that you have not been requested by any party to give on matters that are specific to the dispute;

(3) you are not a party or a party's officer and the subpoena would require you to incur substantial travel expense; or

(4) the court determines that justice requires the subpoena to be quashed or modified.

In these last four circumstances a court may instead of quashing or modifying a subpoena, order your appearance or order the production of material under specified conditions if:

a. the party or attorney serving the subpoena shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship; and

b. the person's travel expenses or the expenses resulting from the production are at issue, the party or attorney serving the subpoena assures that the subpoenaed person will be reasonably compensated for those expenses.

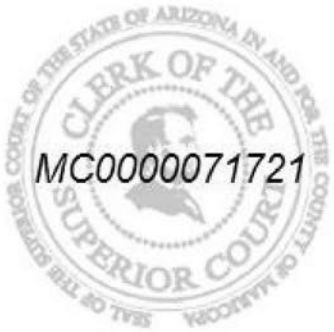
ADA Notification

Requests for reasonable accommodation for persons with disabilities must be made to the division assigned to the case by the party needing accommodation or his/her counsel at least three (3) judicial days in advance of a scheduled proceeding.

Interpreter Notification

Requests for an interpreter for persons with limited English proficiency must be made to the division assigned to the case by the party needing the interpreter and/or translator or his/her counsel at least ten (10) judicial days in advance of a scheduled court proceeding.

SIGNED AND SEALED this 7th day of May, 2024
Jeff Fine, CLERK



By: The State Bar of Arizona on behalf of the clerk pursuant to ARCP 45(a)(2)