RESOLUTION 11-01-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Family Code section 217.5, to read as follows:

§ 217.5

(a) At the initial hearing on a request for order brought under the Family Code, if a party seeks to present live testimony pursuant to section 217 of the Family Code, and the court grants their request, the court shall:

(1) continue the matter to allow a party an adequate opportunity to prepare for that live testimony, whether set as a short-cause or long-cause matter;

(2) shall not expect the parties to present that live testimony on the date of the initial hearing;

(3) if the court determines the need for temporary orders pending hearing, the court may grant such orders, without prejudice, pending the continued hearing date; and,

(4) the court shall issue case management orders to facilitate the parties getting ready for the special setting even if the matter is transferred to another department to accommodate what the court determines to be the need for a long-cause setting.

(b) The Judicial Council shall, by January 1, 2022, prescribe a case management order form in conformity with subsection (a).

(c) The Judicial Council shall, by January 1, 2022, modify its existing forms FL-300 and FL- 320 to require a party to give notice of intent to present live testimony.

(d) The Judicial Council shall, by January 1, 2022, adopt a statewide rule of court pertaining to case management on requests for orders and modify existing court rules in conformity therewith.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Vicki Greene, Dena Kleeman, Annie Wishengrad, Ruth Kremen, Heather Patrick, Wendy Sharp, Rozanna Velen, Stephen Gershman, Robert Brandt, Stephen Cawelti, Claudia Ribet, Anthony Storn, Barbara Zipperman, Warren Shiell, Jennifer Skolnick, Joel Schwartz, Michael Maguire, Andrew Breitman, Marshall Waller.

STATEMENT OF REASONS

The Problem (including existing law): Family Code section 217 provides that the trial court must grant a request for live testimony at a hearing on a request for order (involving significant *pendente lite* or post-judgment issues, such as prejudgment interim orders for, or post-judgment modification of, child custody, spousal support and child support, among other issues) unless the Court finds good cause for denying the request. These issues are often very complex and involve third party witnesses and forensics (expert testimony).

However, this determination, of whether a party will be granted or denied the right to present live testimony is not made until the parties show up in court on the initial date of hearing. Therefore,

the parties do not know whether the Court will find good cause to deny the request (and section 217 clarifies the factors to be considered) or will allow the parties live testimony. Long-cause matters may be reassigned to a different judge.

Today, with remote and video hearings, it is extremely difficult, costly and at times not possible to prepare for court without knowing whether the Court will grant a 217 request. Live hearings requiring calling witnesses (through Court Connect and other avenues) and making sure all witnesses and the Court have all non-impeachment exhibits/evidence available and from different remote locations. In short, plans need to be made in advance and those plans depend upon whether the Court grants the request for live testimony.

Moreover, the initial determination cannot be made by conference call to the Court or judicial assistant because parties get to present their reason for wanting or needing live testimony and the Court must make specific findings if denied (pursuant to the factors delineated in section 217), that are reviewable on appeal. Therefore, the parties need an opportunity to address their request with the court before they are expected to announce ready and present the live witnesses' testimony and to arrange for the sharing of exhibits, and impeachment exhibits.

There also is no reason to require all of this work effort and expenditure of funds to prepare witnesses and share exhibits if the Court will not grant the 217 request for live testimony. Similarly, if the Court is going to grant the request, then the parties need time to prepare for that live hearing, with witnesses and documentary evidence/exhibits.

The Solution: This resolution would alleviate the problem and the uncertainty by making sure that the first date, when the parties appear in court, they will not be expected to start putting on their live witnesses (whether remotely or in person). Rather, instead, on that first appearance the parties can argue their respective positions, obtain a judicial ruling and then, be assured that another date will be set for the taking of live testimony (giving the parties time to prepare their witnesses, exhibits and case for that live hearing) whether the witnesses, parties and/or counsel decide to appear remotely or in person or in various combinations of remote or in person attendance.

IMPACT STATEMENT
This resolution may require the Judicial Council to adopt conforming changes to Rules of Court.

CURRENT OR PRIOR RELATED LEGISLATION
None known

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RESOLUTION 11-02-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to to amend Family Code section 7820, to read as follows:

§ 7820

A proceeding may be brought under this part for the purpose of having a child under the age of 18 years declared free from the custody and control of either or both parents if the child comes within any of the descriptions set out in this chapter, or if all of the requirements set forth in Section 1516.5 of the Probate Code are satisfied.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Probate Code section 1516.5 provides an alternative avenue for long-term guardians to seek termination of parental rights if the three requirements enumerated in subdivision (a) of the statute are met. Section 1516.5 specifies that the action is to be brought "in accordance with the procedures specified in Part 4 (commencing with Section 7800) of Division 12 of the Family Code . . ." However, in Part 4 of Division 12 of the Family Code, under Chapter 2 (Circumstances Where Proceeding May Be Brought), there is no reference to Probate Code section 1516.5.

The Solution: This resolution serves to conform Family Code section 7820 to the language in Probate Code section 1516.5 by including section 1516.5 as one of the ways in which a proceeding to free a minor may be brought.

IMPACT STATEMENT
This resolution serves to clarify existing law under the Probate and Family Codes and does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT:
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RESPONSIBLE FLOOR DELEGATE: Ami Sheth Sagel

RESOLUTION 11-03-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 215, to read as follows:

§ 215

(a) Except as provided in subdivision (b) or (c), after entry of a judgment of dissolution of marriage, nullity of marriage, legal separation of the parties, or paternity, or after a permanent order in any other proceeding in which there was at issue the visitation, custody, or support of a child, no modification of the judgment or order, and no subsequent order in the proceedings, is valid unless any prior notice otherwise required to be given to a party to the proceeding is served, in the same manner as the notice is otherwise permitted by law to be served, upon the party. For the purposes of this section, service upon the attorney of record is not sufficient.

(b) A postjudgment motion to modify a custody, visitation, or child support order may be served on the other party or parties by first-class mail or airmail, postage prepaid, to the persons to be served. For any party served by mail, the proof of service shall include an address verification.

(c) This section does not apply if the court has ordered an issue or issues bifurcated for separate trial in advance of the disposition of the entire case. In those cases, service of a motion on any outstanding matter shall be served either upon the attorney of record, if the parties are represented, or upon the parties, if unrepresented. However, if there has been no pleading filed in the action for a period of six months after the entry of the bifurcated judgment, service shall be upon both the party, at the party's last known address, and the attorney of record.

(d) Nothing contained herein requires service of the postjudgment motion pursuant to subdivision (a) and (b) to be by personal delivery upon the party on whom service is made unless such personal delivery is otherwise required by law.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): The proposed language clarifies a potential ambiguity in the existing statute regarding whether the party must be personally served with notice when the post-judgment motion does not involve a modification of "custody, visitation, or child support."

Subdivision (b) states service may be by first-class mail or airmail, postage prepaid, to the persons to be served, along with an address verification when the subject of the motion is custody, visitation or child support.

However, regarding other requests (spousal support modification request being one example), the code leaves us with, "in the same manner as the notice is otherwise permitted by law to be served, upon the party…"

Courts have invalidated post-judgment orders where actual notice was not given to the party. See *In re Marriage of Roden* (1987) 193 Cal.App.3d 939, 945; *In re Marriage of Kreiss* (1990) 224 Cal.App.3d 1033, 1039–1040.

In *In re Marriage of Seagondollar* (2006) 139 Cal.App.4th 1116, the court, in a footnote, addressed this potential ambiguity and service requirement on a post-judgment party: "Some cases have expressed reservations, as do we, about an actual notice exception. (*In re Marriage of Roden* (1987) 193 Cal.App.3d 939, 944; *In re Marriage of Kreiss, supra*, 224 Cal.App.3d at pp. 1038-1039.) If the Legislature had intended to permit service by actual notice of post-judgment modification requests, it could have drafted Family Code section 215 to so permit. But the Legislature enacted section 215 as requiring service "in the same manner as the notice is otherwise permitted by law to be served . . . upon the party." *In re Marriage of Seagondollar* (2006) 139 Cal.App.4th 1116, 1130, fn. 5.

The Solution: The proposed language adding subsection (d) states personal delivery upon the party is not required under section 215 unless it is otherwise required by law.

This avoids reservation by the courts and any alleged ambiguity that may cause a trial court to require personal service before ruling on a post judgment motion.

One example of the “otherwise required by law” exception are orders to show cause regarding contempt where the moving party may include a modification request of an order within the order to show cause. Current law requires orders to show cause regarding contempt to be personally served.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known

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RESPONSIBLE FLOOR DELEGATE: B. Robert Farzad

RESOLUTION 11-04-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 270, to read as follows:

§ 270

Except as set forth in Sections 1101 and 3027.1, if a court orders a party to pay attorney's fees or costs under this code, the court shall first determine that the party has or is reasonably likely to have the ability to pay.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Family Code section 270's use of the words, "under this code" encompasses the entire Family Code.

There are certain Family Code sections that either permit or require the court to order attorney's fees and costs in the form of sanctions.

Section 1101 addresses violations of fiduciary duties. Subsection (g) mandates an award of attorney's fees and costs if there is a finding of a fiduciary duty breach. To mandate fees and costs if there is a finding of a fiduciary duty breach, but then eliminate the mandate to award fees and costs due to an inability to pay is contradictory.

Our appellate courts noted the ambiguity in the application of section 270 to 1101. In footnote 9 of *In re Marriage of Schleich* (2017) 8 Cal.App.5th 267, the court noted: "The parties dispute whether the section 270's ability to pay requirement applies to an award of attorney's fees as a sanction under section 1101, subdivision (g). We do not reach that issue because the trial court's ability to pay determination implicitly encompassed the sanctions award." (Fn. 9, *Schleich*, Id. at 297)

Section 3027.1 addresses a *knowingly* false accusation of child abuse or neglect during a child custody proceeding. If the court makes such a finding, it may award sanctions against the person who knowingly made the false allegation. Unlike section 1101, this statute does not use "shall" or other mandatory language. However, like sections 271 and 1101, 3027.1 is a sanctions-based statute.

A sanctions-based statute intended to deter significant misconduct by a person who knowingly makes false allegations of child abuse should not relieve that person of the sanctions because that person may not have the ability to pay the sanction. To allow such an escape from the sanction accomplishes the opposite of what 3027.1 intends - to deter such misconduct.

The Solution: The solution is to amend Family Code section 270 so "ability to pay" is not a consideration when a party asks the court to order sanctions pursuant to sections 1101 or 3027.1.

If the legislature intended sanctions-based statutes such as 1101 and 3027.1 to include an analysis of ability to pay, it would have included such language within the section. The solution proposed directly addresses this issue so there is no further ambiguity on this subject and our trial courts know ability to pay is not a consideration if it first finds conduct justifies sanctions.

The solution is consistent with how the Family Code addresses other sanctions-based code sections. The best example is Family Code section 271, which, by its terms, does not have an "ability to pay" component.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: B. Robert Farzad

RESOLUTION 11-05-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 271, to read as follows:

§ 271

(a) Notwithstanding any other provision of this code, the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. <u>The party against whom the sanction is sought has the burden of proving an unreasonable financial burden by a preponderance of the evidence.</u> In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award.

(b) An award of attorney's fees and costs as a sanction pursuant to this section shall be imposed only after notice to the party against whom the sanction is proposed to be imposed and opportunity for that party to be heard.

(c) An award of attorney's fees and costs as a sanction pursuant to this section is payable only from the property or income of the party against whom the sanction is imposed, except that the award may be against the sanctioned party's share of the community property.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

<u>The Problem (including Existing Law)</u>: The current language of Family Code section 271 does not specify which party must establish the "unreasonable financial burden."

Family law judges are therefore unclear whether the moving party or responding party has the burden of proof on this issue.

To place the burden on the moving party is unreasonable. A moving party often seeks sanctions pursuant to section 271 due to the responding party’s nondisclosure or incomplete disclosure of financial information.

In addition, the moving party often does not have the necessary financial information of the responding party to address the issue of unreasonable financial burden. This is especially true in parentage cases and many post-judgment requests for order.

The Solution: The proposed language resolves this ambiguity.

It assigns the burden of proving an "unreasonable financial burden" as a defense to the sanctions request on the responding party against whom the sanction is sought.

Placing the burden on the responding party is logical because "unreasonable financial burden" is a defense to a section 271 sanctions request, and the court only reaches the issue of whether there is "unreasonable financial burden" if it first finds the responding party's litigation conduct is sanctionable.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: B. Robert Farzad

RESOLUTION 11-06-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 3027.1, to read as follows:

§ 3027.1

(a) If a court determines, based on the investigation described in Section 3027 or other evidence presented to it, that an accusation of child abuse or neglect made during a child custody proceeding is false and the person making the accusation knew it to be false at the time the accusation was made, the court may impose reasonable money sanctions, not to exceed all costs incurred by the party accused as a direct result of defending the accusation, and reasonable attorney's fees incurred in recovering the sanctions, against the person making the accusation. For the purposes of this section, "person" includes a witness, a party, or a party's attorney.

~~(b) On motion by any person requesting sanctions under this section, the court shall issue its order to show cause why the requested sanctions should not be imposed. The order to show cause shall be served on the person against whom the sanctions are sought and a hearing thereon shall be scheduled by the court to be conducted at least 15 days after the order is served.~~

(b) An award of monetary sanctions and reasonable attorney's fees pursuant to this section shall only be imposed after the court's own motion or the motion of a party and notice to the person against whom the monetary sanctions and reasonable attorney's fees is proposed to be imposed and opportunity for that person to be heard.

(c) The remedy provided by this section is in addition to any other remedy provided by law.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): The current version of subdivision (b) creates a confusing and ambiguous procedure to seek sanctions and have the court hear and rule on the request.

This procedure is unnecessarily inconsistent with other sanctions-based Family Code sections such as Family Code section 271.

Section 3027.1 is outdated and refers to an order to show cause proceeding instead of the request for order proceeding.

The Solution: The proposed modification brings subdivision (b) in line with the language of section 271, which is also a sanctions-based statute.

With the modification, such a request may be by the court's own motion or the motion of a party, the latter of which is generally by a request for order or at a trial so long as there is proper notice to the person against whom the sanctions and fees are sought.

The motion may be prejudgment or post judgment.

Like sanctions pursuant to section 271, such a request for order or trial request affords each party due process and does not unduly limit the court with the unnecessary procedural complexities of a separate and distinct order to show cause process.

The proposed language liberally borrows from section 271. Therefore, there is already ample precedent regarding what constitutes proper notice and opportunity to be heard because such cases interpreted nearly identical language in the context of a section 271 sanctions request. See *Parker v Harbert* (2012) 212 Cal.App.4th 1172, 1178; *Marriage of Duris & Urbany* (2011) 193 Cal.App.4th 510, 513; *Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1529.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: B. Robert Farzad

RESOLUTION 11-07-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 3110, to read as follows:

§ 3110

(a) As used in this chapter, "court-appointed investigator" means a probation officer, domestic relations investigator, or court-appointed evaluator directed by the court to conduct an investigation pursuant to this chapter.

(b) The holding in the decision of People v. Sanchez (2016) 63 Cal.4th 665 is abrogated as to a court-appointed investigator who may testify to their opinion based upon case-specific hearsay so long as that testimony includes either otherwise admissible evidence or is hearsay that experts in the field routinely rely upon.

(c) The Legislature requests the Judicial Council make rules to implement this statute including amendment to California Rules of Court Rule 5.220 and/or 5.230.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): The California Supreme Court holding in *People v. Sanchez* (2016) 63 Cal.4th 665 constrained the presentation of expert witness testimony if the opinion of the expert relied upon case-specific hearsay that was otherwise inadmissible. This rule has been extended in cases such as *Sargon Enterprises, Inc. v. U.S.C.* (2017) 17 Cal.App.5th 51 that requires an expert witness's testimony to be "tethered" to admissible evidence.

However, in a Family Law matter with complex child custody issues, the court may allow an expert to be designated under Evidence Code section 730 and Family Code section 3111 to assist the court in its assessment of the best interests of the child. To do so that expert must rely upon case-specific hearsay – interviews with the child(ren), relatives, collateral witness such as teachers, psychometric test results – in forming that opinion.

The issue is what the expert can testify to regarding their best interests analysis. The *Sanchez* and *Sargon* progeny of cases boil down to: the expert may rely upon case-specific hearsay but may not relay that case-specific hearsay as a basis for their opinion. *People v. Perez* (2018) 4 Cal.5th 421. This does not allow the trier of fact to consider all the circumstances bearing on the child custody decision before them.

The American Psychological Association, The Association of Family and Conciliation Courts, as well as the California Rules of Court require the mental health professional to interview the children, to make specific assessments based upon observations outside of court, as well as collection of data from a variety of sources.

The Solution: The solution is to amend Family Code section 3110 so that the holding in *People v. Sanchez* is expressly abrogated to the court-appointed child custody investigator (thus no amendment required to Family Code sections 3111, 3116 and 3118), and if the court makes a finding that the case-specific hearsay, even if otherwise inadmissible, is that routine relied upon by experts in the field.

The solution avoids amendment to any Evidence Code statutes regarding witness and expert witness testimony, allowing other areas of practice and other expert witnesses to still comply with the holding in *People v. Sanchez.*

The solution also requires the Legislature to request the Judicial Council revise California Rules of Court Rules 5.220 and 5.230 to conform with the amended Family Code section 3110.

IMPACT STATEMENT
This resolution affects Family Code sections 3110.5, 3111, 3112, 3113, 3114, 3115, 3116, 3117, and 3118, as well as California Rules of Court Rules 5.220 and 5.230.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: Steven G. Hittelman

RESOLUTION 11-08-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 4331, to read as follows:

§ 4331

(a) In a proceeding for dissolution of marriage or for legal separation of the parties, the court may order a party to submit to an examination by a vocational training counselor. The examination shall include an assessment of the party's ability to obtain employment based upon the party's age, health, education, marketable skills, employment history, and the current availability of employment opportunities. The focus of the examination shall be on an assessment of the party's ability to obtain employment that would allow the party to maintain their marital standard of living.

(b) The order may be made only on motion, for good cause, and on notice to the party to be examined and to all parties. The order shall specify the time, place, manner, conditions, scope of the examination, and the person or persons by whom it is to be made.

(c) A party who does not comply with an order under this section is subject to the same consequences provided for failure to comply with an examination ordered pursuant to Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.

(d) "Vocational training counselor" for the purpose of this section means an individual with sufficient knowledge, skill, experience, training, or education in interviewing, administering, and interpreting tests for analysis of marketable skills, formulating career goals, planning courses of training and study, and assessing the job market, to qualify as an expert in vocational training under Section 720 of the Evidence Code.

(e) A vocational training counselor shall have at least the following qualifications:

(1) A master's degree in the behavioral sciences, or other postgraduate degree that the court finds provides sufficient training to perform a vocational evaluation.

(2) Qualification to administer and interpret inventories for assessing career potential.

(3) Demonstrated ability in interviewing clients and assessing marketable skills with an understanding of age constraints, physical and mental health, previous education and experience, and time and geographic mobility constraints.

(4) Knowledge of current employment conditions, job market, and wages in the indicated geographic area.

(5) Knowledge of education and training programs in the area with costs and time plans for these programs.

(f) The court may order the supporting spouse to pay, in addition to spousal support, the necessary expenses and costs of the counseling, retraining, or education.

(g) The written report and testimony of the vocational training counselor shall not be made inadmissible if the opinion relied upon case-specific hearsay that is, itself, inadmissible so long as the hearsay relied upon is that which is routinely relied upon by experts in the field.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): The California Supreme Court holding in *People v. Sanchez* (2016) 63 Cal.4th 665 constrained the presentation of expert witness testimony if the opinion of the expert relied upon case-specific hearsay that was otherwise inadmissible. This rule has been extended in cases such as *Sargon Enterprises, Inc. v. U.S.C.* (2017) 17 Cal.App.5th 51 that requires an expert witness's testimony to be "tethered" to admissible evidence.

However, California Family Code section 4331 provides for the court to allow a vocational examination to be conducted of one of the parties is unemployed or under-employed, either by choice or circumstance, when child or spousal support is at issue. Family Code section 4331, as well as the professional qualifications of the vocational training counselor, require the use of case-specific hearsay.

The concept of "imputation of income" or "earning capacity" is central to the relief provided under Family Code section 4331 and is defined by *In re Marriage Padilla* (1995) 38 Cal.App.4th 1212:

"'Earning capacity is composed of (1) the ability to work, including such factors as age, occupation, skills, education, health, background, work experience and qualifications; (2) the willingness to work exemplified through good faith efforts, due diligence and meaningful attempts to secure employment; and (3) an opportunity to work which means an employer who is willing to hire.'" If a parent is unwilling to work despite the ability and the opportunity, earning capacity may be imputed. A parent's motivation for not pursuing income opportunities is irrelevant when applying the *Regnery* test. [Citations omitted.]

More recent Appellate Court decisions provide guidance as to why the *Sanchez* holding should be abrogated under these circumstances. *In re Marriage of LaBass and Munsee* (1997) 56 Cal.App.4th 1331 held that want ads are not hearsay and that a party (similarly situated in education, training, and employment as the other party) could testify as to whether those job offers would apply to the other party.

Further, the holding of *In re Marriage of Bardzik* (2008) 165 Cal.App.4th 1291 puts the burden of proof and persuasion on the party seeking to impute an ability to earn on the other party. Testimony from a qualified vocational training counselor would meet that burden, but to do so the counselor would have to rely upon case-specific hearsay, i.e., whether the party met the qualifications required by the employer and would be considered for hire (the third prong, above).

The Solution: The solution is to amend Family Code section 4331to add the language expressly abrogating the holding of *People v. Sanchez* if the case-specific hearsay used by the vocational expert is the kind routinely relied upon by experts in the field.

Limiting the exception to Family Code section 4331, which provides a unique statutory designation of an expert, avoids amendment to any Evidence Code sections regarding expert

witness testimony. The resolution still allows other areas of practice to fully litigate the circumstances of case-specific hearsay relied upon by an expert witness.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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