

**ADVISEMENTS
&
OBJECTIONS**

22nd Annual AB 1058
Child Support
Training Conference
November 15, 2018

CHILD SUPPORT





**LEGAL
NOTICE**

Family Code
§4251
Advisement




**FAMILY CODE
§4251 ADVISEMENT**
(excerpts)

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

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




HOW DO YOUR COURTS HANDLE FC 4251 ANNOUNCEMENT?

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

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IN RE THE MARRIAGE OF KELLI & MARC DJULUS

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



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



- ❖ Bailiff passes out document with advisement
- ❖ Video of Commissioner making announcement played prior to court session
- ❖ Clerk makes advisement prior to Commissioner taking the bench
- ❖ Commissioner makes announcement at the beginning of each court session
- ❖ Commissioner makes announcement prior to each individual case

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What do you do as a clerk if the Commissioner does not give the advisement?

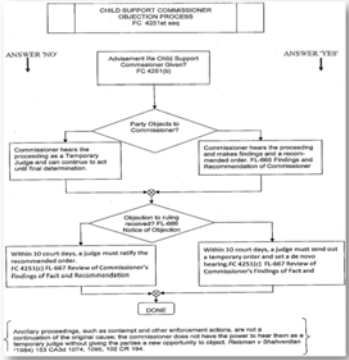
◊ Whether a form is used in your courtroom or not, make sure any advisement is noted on the Minutes.

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OBJECTION TO COMMISSIONER



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CHILD SUPPORT COMMISSIONER OBJECTION PROCESS
FC 4251(a) (a)

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    graph TD
      Start[Advisement the Child Support Commissioner/Order FC 4251(b)] --> Obj{Party Objects to Commissioner?}
      Obj -- ANSWER "NO" --> Temp[Commissioner hears the proceeding as a Temporary Judge and can continue to act until final determination.]
      Obj -- ANSWER "YES" --> Hear[Commissioner hears the proceeding and makes findings with a court-mandated order. FC 4251.6(b) Findings and Recommendation of Commissioner.]
      Temp --> Obj2{Objection to Judge received? FC 4251.6(c) Notice of Objection?}
      Hear --> Obj2
      Obj2 --> NoObj[Within 10 court days, a judge must ratify the recommended order. FC 4251.6(d) Review of Commissioner's Findings of Fact and Recommendation.]
      Obj2 --> YesObj[Within 10 court days, a judge must send out a temporary order and set a de novo hearing. FC 4251.6(e) To 467 Review of Commissioner's Findings of Fact and Recommendation.]
      NoObj --> End[END]
      YesObj --> End
  
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Auxiliary proceedings, such as contempt and other enforcement actions, are not a continuation of the original cause; the commissioner does not have the power to hear them as a temporary judge. Informal proceedings are not subject to a new reporting to object. *Revised 1/2016*

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PROCESS FOR OBJECTION

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

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



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FINDINGS & RECOMMENDATION OF COMMISSIONER


FL-665
(Alternative Mandatory Use)



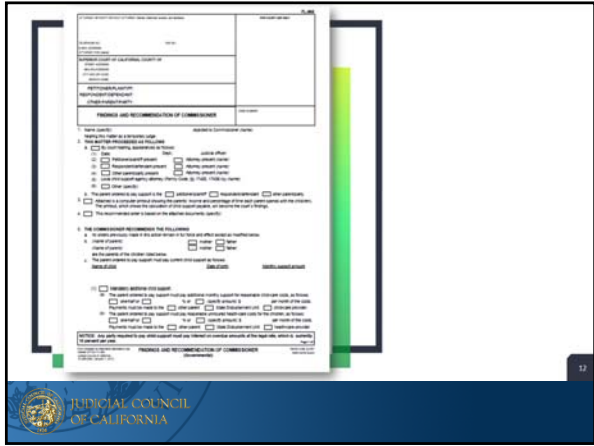
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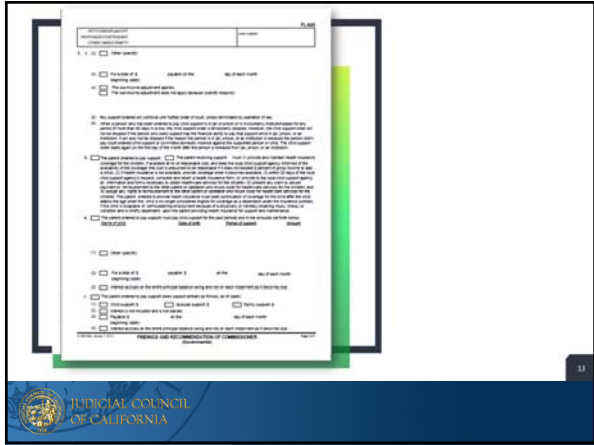
FAMILY CODE 4251(C)

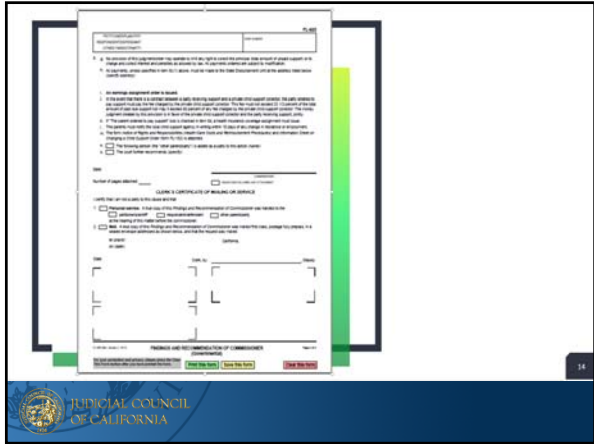
- ◆ If any party objects to the commissioner acting as a temporary judge, the commissioner may hear the matter and make findings of fact and a recommended order. Within ten (10) court days, a judge shall ratify the recommended order unless either party objects to the recommended order, or where a recommended order is in error.
- ◆ Any party may waive his or her right to the review hearing at any time.



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REVIEW OF COMMISSIONER'S FINDINGS OF FACT & RECOMMENDATION


FL-667
(Mandatory Form)




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- ❖ Commissioner's Findings must be reviewed by Judge within 10 days
- ❖ Trial De Novo hearing must be set within 10 days
- ❖ (DISCUSSION - scheduled within 10 days or put on calendar within 10 days?)
- ❖ Parties may waive their right to hearing at any time



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- ❖ How do you complete Clerk's Certificate of Mailing if you do not have addresses of all the parties? The objecting party should have his/her address on objection.
- ❖ Does your LCSA serve the documents in that case?

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NOTICE OF OBJECTION

FL-666
(Mandatory Form)





- ❖ Objection may be verbal in court; however, they must still file Notice of Objection
- ❖ Form is to be completed by objecting party and filed with the Court within ten (10) court days of hearing




COMMISSIONER V. JUDGE

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

- ◊ Review & determine ex parte applications for orders & writs
- ◊ Take testimony
- ◊ Establish a record, evaluate evidence, make recommendations or decisions
- ◊ Enter judgments/orders based upon voluntary acknowledgments of support liability, parentage & stipulated agreements as to child support
- ◊ Enter default orders/judgments
- ◊ In paternity actions, order parties to submit to genetic testing




- ◊ If requested, join issues re custody, visitation and protective orders in action filed by LCSA
- ◊ Refer parties to mediation
- ◊ Accept stipulations re custody, visitation, and protective orders
- ◊ Refer contested issues of custody, visitation, and protective orders to judge or another commissioner
- ◊ Or hear the matter if costs related to Title IV-D are segregated
- ◊ The LSA shall be served notice by moving party of any proceeding...or any order shall be voidable upon motion of the LCSA.

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CLAIMS OF EXEMPTION


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



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CCP 703.550



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

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• FL-677

• To be filed by the judgment creditor within 10 days of service

• Judgment creditor to give to levying officer with copy of Notice of Motion

The image shows a screenshot of the Judicial Council of California Form FL-677, titled "NOTICE OF OPPOSITION AND NOTICE OF MOTION TO CLAIM OF EXEMPTION". The form is a legal document with various sections for case information, party details, and a declaration of the debtor's assets. A red box highlights a warning at the top right: "Do not check this box unless you have a written declaration from the creditor that the property is exempt from the judgment creditor's claim." The form is numbered "74" in the bottom right corner.

CCP 703.570

◆ (a) The hearing on the motion shall be held not later than 30 days from the date the notice of motion was filed with the court unless continued by the court for good cause.

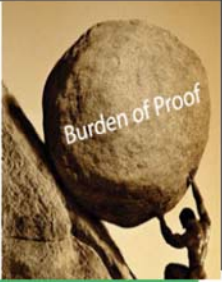
◆(b) Not less than 10 days prior to the hearing, the judgment creditor shall serve a notice of the hearing and a copy of the notice of opposition to the claim of exemption on the claimant and on the judgment debtor, if other than the claimant. Service shall be made personally or by mail.

The image features a golden scales of justice icon on a wooden surface. To the right, a green box contains the text "CCP 703.570" and two bullet points detailing the hearing process for a claim of exemption. The Judicial Council of California logo is in the bottom left corner, and the page is numbered "75" in the bottom right corner.

The image shows another screenshot of the Judicial Council of California Form FL-677, identical to the one in the first slide. A red box highlights the same warning at the top right: "Do not check this box unless you have a written declaration from the creditor that the property is exempt from the judgment creditor's claim." The form is numbered "76" in the bottom right corner.

CIVIL CODE OF PROCEDURE §703.580


- ◊(a) The claim of exemption and notice of opposition to the claim of exemption constitute the pleadings...
- ◊(b) ...the exemption claimant has the burden of proof.
- ◊(c) ...if the court is satisfied that sufficient facts are shown by the claim of exemption (including the financial statement if one is required) and the notice of opposition, it may make its determination thereon.
- ◊if not satisfied, the court shall order the hearing continued for the production of other evidence, oral or documentary.




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CIVIL CODE OF PROCEDURE §703.580

- ◊(d) ...the court shall determine by order whether or not the property is exempt in whole or in part... No findings are required in a proceeding under this section.
- ◊(e) **THE COURT CLERK SHALL PROMPTLY TRANSMIT A CERTIFIED COPY OF THE ORDER TO THE LEVYING OFFICER.** Subject to Section 703.610, the levying officer shall, in compliance with the order, release the property or apply the property to the satisfaction of the money judgment.
- ◊(f) Unless otherwise ordered by the court, if an exemption is not determined within the time provided by Section 703.570, the property claimed to be exempt shall be released.



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QUESTIONS OR COMMENTS?

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Please feel free to contact me.