

Civil No. _____

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
TWELFTH APPELLATE DISTRICT

John Jones,
Petitioner,

vs.

The Superior Court of the State of California,
County of Travertine,
Respondent.

Wanda Jones,
Real Party in Interest.

**PETITION FOR WRIT OF MANDATE, PROHIBITION,
OR OTHER APPROPRIATE RELIEF**

(Related appeal filed separately)

Please note:

This sample document is redacted from an actual research and writing project we did for a customer some time ago. It reflects the law as of the date we completed it. Because the law may have changed since that time, please use it solely to evaluate the scope and quality of our work.

If you have questions or comments, please contact Jim Schenkel at 415-553-4000, or email info@quojure.com.

Attorneys for Petitioner
John Jones

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PETITION

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF
THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, TWELFTH
APPELLATE DISTRICT:

Petitioner alleges:¹

1. Petitioner is the petitioner in the action entitled “In Re the Marriage of John Jones and Wanda Jones,” Family Law Action No. 54321, now pending before the respondent court.
2. Respondent is the Superior Court of the State of California, County of Travertine, in which the above-entitled action is pending.
3. Real party in interest is Wanda Jones, who has an interest directly affected by this proceeding because she is the respondent in the above-entitled action.
4. On _____, Wanda Jones moved to modify certain child-support and spousal-support orders. A copy of the motion is attached hereto as exhibit A and made a part hereof.
5. John Jones opposed the motion. A copy of his opposition is attached hereto as exhibit B and made a part hereof.
6. The motion to modify child and spousal support was heard on February 21, 2000.

¹In the interests of brevity, all references to the factual record have been deleted from this sample document.

7. During the hearing, the trial court heard evidence that John Jones may have been paid “under the table” during 1997 and 1998.

8. The trial court’s ruling reversed the prior support orders, ordering John Jones to pay child support and spousal support to Wanda Jones.

9. At the conclusion of the hearing, the trial court suddenly, with no warning, ordered John Jones to pay \$4,500 in sanctions to Wanda Jones, under Family Code § 271. A copy of respondent court’s minute order granting the motion is attached hereto as exhibit C and made a part hereof.

10. The trial court said that its reason for the sanctions was that John Jones was getting paid under the table, did not pay taxes, and was hiding assets. A copy of the transcript of the proceedings is attached hereto as exhibit D and made a part hereof.

11. The trial court made the order for sanctions sua sponte, giving John Jones no notice or opportunity to be heard.

12. Respondent has abused its discretion and/or acted in excess of its jurisdiction by awarding sanctions against petitioner without notice or an opportunity to be heard, in violation of Family Code § 271.

13. Respondent has abused its discretion and/or acted in excess of its jurisdiction by awarding sanctions under Family Code § 271 without first considering petitioner’s ability to pay, and by awarding sanctions that impose an unreasonable financial burden on him in violation of Family Code § 271.

14. Petitioner is a person beneficially interested in the issuance of the writ because

he is the party against whom the sanctions were ordered.

15. Petitioner has performed all conditions precedent to the filing of this petition by raising an objection underlying this petition in the inferior court.

16. At all times herein mentioned, respondent has been able to perform the duty stated above and exercise the discretion stated above. But despite petitioner's demand for the performance of the duty and exercise of the discretion, respondent continues to fail to perform the duty and exercise the discretion.

17. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law, other than the relief sought in this petition, because sanctions of \$4,500 or less are reviewable only on appeal from the entire judgment or on petition for extraordinary writ under Code of Civil Procedure § 904.1(b).

WHEREFORE, Petitioner prays:

1. That the court issue a peremptory writ in the first instance commanding respondent to vacate the order for sanctions issued against petitioner.

2. That the court, alternatively, first issue an alternative writ commanding respondent to vacate the order or, in the alternative, show cause why it should not do so, and thereafter issue a peremptory writ commanding respondent to vacate the order.

Dated:

Attorney for Petitioner

VERIFICATION

I, John Jones, am the petitioner in this proceeding. I have read the foregoing petition and know its contents. The facts stated therein are true and are within my personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated:

John Jones, Petitioner

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This extraordinary writ petition concerns an order issued by the Superior Court of Travertine County in a dissolution action John Jones brought against his former spouse, Wanda Jones. The trial court, acting sua sponte, ordered John Jones to pay \$4,500 in sanctions to Wanda Jones under Family Code § 271. John Jones separately appeals from various other aspects of the court's ruling; that appeal has been filed concurrently herewith.

The final, written order was issued on May 18, 2000. John Jones's motion for new trial, filed July 19, 2000, was denied on August 20, 2000. This writ will be

timely filed on _____.

SUMMARY OF ARGUMENT

The trial court erred in awarding sanctions against John Jones without first providing him notice and an opportunity to be heard, as required by Family Code § 271. Additionally, the trial court abused its discretion by awarding sanctions that impose an unreasonable financial burden on John Jones.

Extraordinary relief is warranted here because sanction awards of \$4,500 or less are reviewable only on appeal from the entire judgment or by petition for extraordinary writ. Code Civ. Proc. § 904.1(b). No other adequate relief is available to John Jones. The trial court's order is both clearly erroneous as a matter of law and substantially prejudices John Jones.

STATEMENT OF THE CASE

This writ petition concerns an order of sanctions against John Jones issued after a hearing regarding modification of spousal- and child-support orders.

On January 10, 2000, Wanda Jones moved to modify certain child-support and spousal-support orders, and John Jones opposed it. The motion was heard on February 21, 2000. During the hearing, the trial court heard evidence that John Jones may have been paid "under the table" during 1997 and 1998.

The trial court essentially reversed the prior support orders, ordering John Jones to pay child support and spousal support to Wanda Jones. At the conclusion of the hearing, the trial court suddenly, with no warning, ordered John Jones to pay \$4,500 in sanctions to Wanda Jones, under Family Code § 271. The trial court said that the reason for the sanctions was that John Jones was getting paid under the table, did not pay taxes, and was hiding assets.

The trial court made the order for sanctions sua sponte, giving John Jones no notice or opportunity to be heard. His counsel objected to the order by filing a motion for new trial, which was denied.

ARGUMENT

1. The trial court erred in awarding sanctions under Family Code § 271 with no notice or opportunity to be heard.

Sanctions under Family Code § 271 cannot be awarded without notice and an opportunity to be heard. Family Code § 271(b); *In re Marriage of Hublou* (1991) 231 Cal.App.3d 956, 964-965; 10 Witkin SUMMARY OF CALIFORNIA LAW (9th ed., 2000 Supp.) Parent & Child § 2-O, at 18. Sanction requests under § 271 must be made by separate noticed motion or Order to Show Cause. Here, John Jones did not know that sanctions under § 271 were going to be awarded against him until the hearing's final moments. He received no notice before the hearing, either from the court or from Wanda Jones. He therefore had no notice or opportunity to be heard on the sanctions

issue, in violation of his right to due process and in violation of Family Code § 271.

2. The trial court abused its discretion by awarding sanctions that impose an unreasonable financial burden.

The amount of the sanction must not impose an unreasonable financial burden on the sanctioned party. Family Code § 271(a). The court must scale the sanction to the payor's ability to pay. *Marriage of Norton* (1988) 206 Cal.App.3d 53, 59 (decided under former Civil Code § 4370.5).

Here, it does not appear that the trial court truly considered John Jones's ability to pay and did not consider whether the sanctions imposed an unreasonable financial burden on him. He is disabled, and the evidence showed that he is not earning nearly enough to pay the sanctions. The trial court stated that John Jones was getting paid "under the table," but the only testimony the trial court heard on this issue was as to 1997 and 1998. There was no evidence that John Jones was paid "under the table" in 1999 or in 2000. The trial court thus did not have sufficient evidence before it to determine whether John Jones had a *current ability* to pay the sanctions.

CONCLUSION

The trial court erred in awarding sanctions against John Jones without complying with the requirements of Family Code § 271. Additionally, the sanction award imposes an unreasonable financial burden on John Jones, in contravention of Family Code § 271. Petitioner therefore requests that this court grant the relief for which petitioner prays.

Dated:

Attorney for Petitioner