

A1

Albert N. Pranno #9807
Robert J. Brennan #15550
Attorneys for Petitioner
Pranno Law, PLLC
The Judge Building
8 East Broadway, Suite 650
Mailing address: P O Box 4276
Salt Lake City, Utah 84110
Voice and Fax (801) 938-3864
Voice and Fax – Toll Free: (888) 908-3864
AlPranno@PrannoLaw.com
Robert@PrannoLaw.com
www.PrannoLaw.com

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH	
JAYDEN HUYNH, Petitioner, v. DANIEL E. WITTE, Respondent.	ORDER FROM HEARING ON PETITIONER'S MOTION FOR RULE 11 SANCTIONS HELD ON OCTOBER 20, 2017 (DECEMBER 19, 2017 MINUTE ENTRY) Civil No. 134903429 Judge Paul B. Parker Commissioner T. Patrick Casey (Filed Jan. 26, 2018)

The above captioned matter having come on regularly before the above entitled Court on October 20, 2017, the Honorable T. Patrick Casey, Third District Judicial Court for Salt Lake County, State of Utah presiding, and Petitioner not being present but represented by her counsel, Albert N. Pranno and Robert J. Brennan, of Pranno Law PLLC, and Respondent present and representing himself, and the Court having reviewed the pleadings, heard oral argument, and entered its Minute Entry on December 19, 2017, and based thereon and for good cause appearing, therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

Findings:

1. The Court finds this is a highly contentious matter by any standards. It was triggered by Petitioner's decision to sell the residence awarded to her in the parties' Decree of Divorce and relocate to California with the parties' child. It appears Petitioner has been less than candid with Respondent at times, including, apparently, not providing him timely notice of her various addresses, as well as her remarriage. However, Respondent's response has been extraordinarily intemperate. As noted by the Commissioner in the Minute Entry dated September 28, 2017, the parties' conflict has expanded into a conflict between Respondent and Petitioner's counsel. This development appears to be the direct result of

the tone, content and volume of Respondent's communications with counsel and the Court.

2. As the Commissioner took time to fully consider and sort through the problems presented by this matter and an appropriate judicial response, Petitioner's counsel, unnecessarily but innocently filed a document entitled "Request to Submit for Decision Rule 11 Sanctions," possibly being concerned that the matter had been overlooked, which it had not. In response, Respondent then filed a document entitled "Objection to Request to Submit for Decision Rule 11 Sanctions" making further substantive arguments and directly disregarding the Commissioner's prior admonition not to use single-spacing for any purpose other than quotation. And in response to that document, Petitioner's counsel felt compelled to file a document entitled "Objection and Motion to Strike Respondent's Request to Submit for Decision Rule 11 Sanctions." This sequence of events represents a perfect illustration of Respondent's insistence on continuing to engage in a prolonged conflict. While Petitioner's Request to Submit for Decision may have occasioned Respondent's Objection, clearly that Objection constituted an improper effort to make further substantive argument on the merits of Petitioner's original motion after the matter had been fully briefed and argued.
3. The Court finds Respondent is representing himself, but he is a practicing attorney and apparently his area of practice is litigation. It

is therefore puzzling that he would display such a lack of understanding about proper Court procedure as well as either an unfamiliarity, or simply a refusal to comply, with the Standards of Professionalism and Civility.

4. The conduct of Respondent of which Petitioner complains includes "filing [papers] with an improper format and length, submitting [papers] for an improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, [and] submitting allegations that do not have evidentiary support, including personal attacks on Petitioner, Petitioner's Counsel, and even this Court (both Judge and Commissioner)."
5. Some of Petitioner's complaints are based on Respondent's communications directly with counsel which the Court finds are clearly offensive and abusive. While communications outside of the Court are not in and of themselves a basis for Rule 11 sanctions, the Court finds these communications are relevant to determining Respondent's state of mind.
6. The Court finds Respondent has filed numerous papers with the Court which have no support in the rules or the law. Respondent has also repeatedly attempted to circumvent the Court's page limits, despite warnings in the past, by filing papers with lengthy footnotes for no good reason other than to squeeze more words into a smaller space. Respondent's papers are replete with comments disparaging Petitioner and her current husband, as well as

Petitioner's counsel. Respondent's characterizations of the Court in his filings are at best combative and highly disrespectful. Petitioner's detailed Motion for Rule 11 Sanctions itemizes multiple instances of each of these categories of conduct.

7. While individually, some of Respondent's actions could be viewed as mere instances of poor judgment by a party in the midst of a difficult domestic conflict, the Court finds that the sheer volume and tone of Respondent's inappropriate communications to the Court and to counsel, even in the face of efforts by the Court to correct his behavior, demonstrate that Respondent is acting out of malice and an intent to use the legal process for punitive purposes.
8. As a lawyer, even one representing himself, Respondent is responsible for understanding and adhering to the Standards of Professionalism and Civility adopted by the Supreme Court of this State. His actions include repeated violations of at least standards one (1) through three (3). In addition, however, Respondent's pattern of conduct constitutes an ongoing violation of Rule 11 of the Utah Rules of Civil Procedure. As such, Respondent is subject to sanctions.
9. The Court finds Respondent's Counter-Motion for Rule 11 sanctions upon Petitioner's counsel is nothing more than an ill-advised attempt to turn the tables on Petitioner and her counsel by claiming that her motion is itself a

violation of Rule 11. Respondent may have some reason to complain as to Petitioner's lack of candor regarding her residence and her marriage to her current husband. However, the Court finds that issue is not appropriately addressed in a Rule 11 motion.

10. Petitioner has requested sanctions to include striking of "all objectionable 'pleadings'", requiring Respondent to obtain counsel, requiring a pre-filing screening of any "pleading" in this case, and an order of attorney fees.
11. As far as Respondent's filings, it is not his pleadings (complaint, answer, counterclaim or reply) that are the problem, but subsequent court papers (e.g. motions, memoranda, and other papers pertaining thereto). Striking those papers as such has no effect (unlike striking a pleading, which would have the potential effect of allowing the Court to enter a default). However, to the extent any particular paper contains objectionable material, it is appropriate that such subject matter be given no weight or import in the Court's ongoing proceedings.
12. The Court finds Respondent is clearly able to afford counsel. He has practiced law for a number of years and has obviously been spending large amounts of time preparing his numerous, lengthy court papers when he might be better employed representing clients. Respondent has also, by his own report, hired a private investigator in an effort to gather information regarding Petitioner and

her current husband. Given Respondent's history in this matter, the Court finds that an order requiring Respondent to retain counsel to represent him in any future proceedings in this Court is entirely justified. Beside the Court, Petitioner and her counsel would be spared the necessity of contending directly with Respondent's personal animosity, and Respondent would benefit by having experienced, objective counsel represent and advise him in resolving the issues raised in the current proceedings. Provided Respondent has competent counsel experienced in family law matters, a pre-filing order should not be necessary.

13. Petitioner has had to incur fairly extensive fees in at least dealing with Respondent's improper filings, and also in dealing with Respondent's belligerent communications outside of Court. The Court finds Petitioner should be reimbursed for the attorney fees she has incurred in responding to specific inappropriate papers filed in Court. If Petitioner has incurred other fees or expenses of a more general nature as a result of Respondent's violations, those fees and expenses are more appropriately dealt with at trial.
14. Finally, as Respondent has clearly had difficulties communicating with Petitioner's counsel without adopting an accusatory, combative tone, the Court finds that he should not himself communicate directly with opposing counsel once he has retained counsel, and prior to that time should not communicate in any

respect except to confirm availability for scheduled court hearings (anticipating something may need to be scheduled before Respondent has retained counsel). This is not intended to be an invitation to Respondent to use Court personnel as a means of communicating or arguing with opposing counsel (as the Court finds Respondent has frequently attempted to do in the past).

Based on the above Findings, the Court hereby awards, adjures, and decrees:

1. Respondent is ordered to promptly retain counsel experienced in family law matters to represent him throughout the duration of these proceedings.
2. Petitioner's request for a pre-filing order is reserved at this time.
3. Respondent is ordered to reimburse Petitioner for her attorney's fees incurred specifically in responding to Respondent's improper filings, in an amount to be established by affidavit of counsel, with the remainder of any fees she has incurred as a result of Respondent's conduct in the matter to be addressed at trial.
4. Respondent is ordered to refrain from communicating directly with opposing counsel once he has obtained counsel. If matters need to be scheduled prior to Respondent retaining counsel, Respondent's communications shall

A9

be limited to indicating and confirming availability for any court hearings.

END OF ORDER
**EXECUTED AND ENTERED BY THE COURT
AS INDICATED BY THE DATE AND SEAL
AT THE TOP OF PAGE 1**

[With Written Approval As To Form
And Content Omitted]

[Notice Pursuant To Rule 7 Of The
Utah Rules Of Civil Procedure Omitted]

[Certificate Of Service Omitted]

**IN THE DISTRICT COURT OF THE THIRD
JUDICIAL DISTRICT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH**

JAYDEN HUYNH, Petitioner, vs. DANIEL E. WITTE, Respondent.	MINUTE ENTRY Case No. 134903429 Commissioner T. Patrick Casey (Filed Dec. 19, 2017)
---	---

This matter came before the Commissioner on Petitioner's Motion for Rule 11 Sanctions, as well as Respondent's Counter-Motion requesting sanctions claiming Petitioner's Motion was brought improperly, on October 20, 2017. Petitioner, who resides in California, was not present but was represented by her counsel, Albert N. Pranno. Respondent appeared representing himself. Having heard and considered the arguments of both sides and reserved the matter to be ruled on in writing, the Commissioner makes the following:

Findings:

1. This is a highly contentious matter by any standards. It was triggered by Petitioner's decision to sell the residence awarded to her in the parties' Decree of Divorce and relocate to California with the parties' child. By all appearances, Petitioner has been less than candid with Respondent at times, including, apparently, not providing him timely notice of

her various addresses, as well as her remarriage. However, Respondent's response has been extraordinarily intemperate. As noted by the Commissioner in the minute entry dated September 28, 2017, the parties' conflict has expanded into a conflict between Respondent and Petitioner's counsel. This development appears, to the Commissioner, to be the direct result of the tone, content and volume of Respondent's communications with counsel and the Court.

2. As the Commissioner has taken time to fully consider and sort through the problems presented by this matter and an appropriate judicial response, Petitioner's counsel, unnecessarily but innocently, filed a document entitled "Request to Submit for Decision Rule 11 Sanctions," possibly being concerned that the matter had been overlooked (it had not). In response, Respondent then filed a document entitled "Objection to Request to Submit for Decision Rule 11 Sanctions" making further substantive arguments and directly disregarding the Commissioner's prior admonition not to use single-spacing for any purpose other than quotation. And in response to that document, Petitioner's counsel felt compelled to file a document entitled "Objection and Motion to Strike Respondent's Request to Submit for Decision Rule 11 Sanctions." This sequence of events represents a perfect illustration of the Respondent's insistence on continuing to engage in a prolonged conflict. While the Petitioner's Request to Submit for Decision may have occasioned Respondent's

Objection, clearly that Objection constituted an improper effort to make further substantive argument on the merits of the Petitioner's original motion after the matter had been fully briefed and argued.

3. Respondent is representing himself, but he is a practicing attorney and apparently his area of practice is litigation. It is therefore puzzling that he would display such a lack of understanding about proper court procedure as well as either an unfamiliarity, or simply a refusal to comply, with the Standards of Professionalism and Civility.
4. The conduct by Respondent of which the Petitioner complains includes "filing [papers] with an improper format and length, submitting [papers] for an improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, [and] submitting allegations that do not have evidentiary support, including personal attacks on Petitioner, Petitioner's Counsel, and even this Court (both Judge and Commissioner)."
5. Some of the complaints are based on communications directly with counsel which are clearly offensive and abusive. While communications outside of the court are not in and of themselves a basis for Rule 11 sanctions, the communications are relevant to determining Respondents state of mind.
6. Respondent has filed numerous papers with the court which have no support in the rules or the law. He has also repeatedly attempt to

circumvent the Court's page limits, despite warnings in the past, by filing papers with lengthy footnotes for no good reason other than to squeeze more words into a smaller space. His papers are replete with comments disparaging to Petitioner and her current husband, as well as counsel. Respondent's characterizations of the Court in his filings are at best combative and highly disrespectful. Petitioner's detailed motion itemizes multiple instances of each of these categories of conduct.

7. While individually, some of the Respondent's actions could be viewed as mere instances of poor judgment by a party in the midst of a difficult domestic conflict, the sheer volume and tone of Respondent's inappropriate communications to the Court and to counsel, even in the face of efforts by the Court to correct his behavior, demonstrate that Respondent is acting out of malice and an intent to use the legal process for punitive purposes.
8. As a lawyer, even one representing himself, Respondent is responsible for understanding and adhering to the Standards of Professionalism and Civility adopted by the Supreme Court of this State. His actions include repeated violations of at least standards 1 through 3. In addition, however, Respondent's pattern of conduct constitutes an ongoing violation of URCP Rule 11. As such, he is subject to sanctions.
9. Respondent's counter-motion is nothing more than an ill-advised attempt to turn the tables

on Petitioner and her counsel by claiming that her motion is itself a violation of Rule 11. Respondent may have some reason to complain as to Petitioner's lack of candor regarding her residence and her marriage to her current husband. However, that issue is not appropriately addressed in a Rule 11 motion.

10. Respondent has requested sanctions to include striking of "all objectionable 'pleadings'", requiring Respondent to obtain counsel, requiring a pre-filing screening of any "pleading" in this case, and an order of attorney fees.
11. As far as Respondent's filings, it is not his pleadings (complaint, answer, counterclaim or reply) that are the problem, but subsequent court papers (e.g. motions, memoranda, and other papers pertaining thereto). Striking those papers as such has no effect (unlike striking a pleading, which would have the potential effect of allowing the Court to enter a default). However, to the extent any particular paper contains objectionable material, it appropriate that those papers be given no weight or import in the Courts ongoing proceedings.
12. Respondent is clearly able to afford counsel. He has practiced law for a number of years and has obviously been spending large amounts of time preparing his numerous, lengthy court papers when he might be better employed representing clients. He has also, by his own report, hired a private investigator in

an effort to gather information regarding Petitioner and her current husband. Given the Respondent's history in this matter, an order requiring him to retain counsel to represent him in any future proceedings in this Court would be entirely justified. Besides the Court, Petitioner and her counsel being, spared the necessity of contending directly with Respondent's personal animosity, Respondent would benefit by having experienced, objective counsel represent and advise him in resolving the issues raised in the current proceedings. Provided Respondent has competent counsel experienced in family law matters, a pre-filing order should not be necessary.

13. Petitioner has had to incur fairly extensive fees in dealing with Respondent's improper filings, at least, and possibly in dealing with Respondent's belligerent communications outside of Court. For current purposes, the Commissioner finds that Petitioner should be reimbursed for the fees she has incurred in responding to specific inappropriate papers filed in Court. If she has incurred other fees or expenses of a more general nature as a result of Respondent's violations, those fees and expenses are more appropriately dealt with at trial.
14. Finally, as Respondent has clearly had difficulties communicating with Petitioner's counsel without adopting an accusatory, combative tone, he should not himself communicate directly with opposing counsel once he has

retained counsel, and prior to that time in any respect except to confirm availability for scheduled court hearings (anticipating something may need to be scheduled before Respondent has retained counsel). This is not intended to be an invitation to Respondent to use Court personnel as a means of communicating or arguing with opposing counsel (as he has frequently attempted to do in the past).

Recommendations:

1. That Respondent be ordered to promptly retain counsel experienced in family law matters to represent him throughout the duration of these proceedings.
2. That Petitioner's request for a pre-filing order be reserved at this time.
3. That Respondent be ordered to reimburse Petitioner for her attorney's fees incurred specifically in responding to Respondent's improper filings, in an amount to be established by affidavit of counsel, with the remainder of any fees she has incurred as a result of Respondent's conduct in the matter to be addressed at trial.
4. That Respondent be ordered to refrain from communicating directly with opposing counsel once he has obtained counsel, and if matters need to be scheduled prior to counsel being retained, that his communications be limited to indicating and confirming availability for any court hearings.

A17

Counsel for Petitioner is requested to prepare and submit to the Court an order pursuant hereto.

DATED this 19th day of December, 2017.

DISTRICT COURT COMMISSIONER

/s/ T. Patrick Casey

Commissioner T. Patrick Casey

[SEAL]

Albert N. Pranno #9807
Robert J. Brennan #15550
Attorneys for Petitioner
PRANNO LAW, PLLC
THE JUDGE BUILDING
8 East Broadway, Suite 650
Mailing address: P O Box 4276
Salt Lake City, Utah 84110
Voice and Fax (801) 938-3864
Voice and Fax – Toll Free: (888) 908-3864
AlPranno@PrannoLaw.com
Robert@PrannoLaw.com
www.PrannoLaw.com

THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH

JAYDEN HUYNH,	:	ORDER FROM
Petitioner,	:	OBJECTIONS HEARING
	:	HELD ON MAY 4, 2018
v.	:	
	:	Civil No. 134903429
DANIEL E. WITTE,	:	Judge Paul B. Parker
Respondent.	:	Commissioner
	:	T. Patrick Casey
	:	(Filed Jun. 1, 2018)

This matter came before the above entitled Court, the honorable Judge Parker presiding, and Petitioner not being present but represented by her counsel Albert N. Pranno, and Robert J. Brennan, of PRANNO LAW,

PLLC, and Respondent being present and represented by counsel Kyle Witherspoon, of PEARSON, BUTLER, & CARSON, PLLC. The Court addressed Respondent's Objection to Minute Entry and Recommendations as Entered on December 19, 2017, and related filings, Petitioner's Objection to Commissioner's Recommendation from Hearing on January 12, 2018, and related filings, Petitioner's Motion to Forego Commissioner Review of Petitioner's Objection to Respondent's Amended Petition to Modify, and related filings, and Petitioner's Motion to Consolidate Petitioner's Objection to Commissioner's Recommendation filed April 4, 2018, and related filings, heard arguments from counsel, and being otherwise fully informed, therefore:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. The Court finds that Respondent's Objection to Minute Entry and Recommendations as Entered on December 19, 2017 again, does not comply with Rules regarding length and format, and fails to comply with previous rulings and admonitions by the Court. Thus, Respondent's Objection to Minute Entry and Recommendations as Entered on December 19, 2017 is hereby stricken and is overruled.
2. Petitioner's Objection to Commissioner's Recommendation from Hearing on January 12, 2018 is overruled. Mr. Witherspoon may continue representing Mr. Witte in this matter.

3. Petitioner's Motion to Forego Commissioner Review of Petitioner's Objection to Respondent's Amended Petition to Modify is denied. That issue shall proceed before Commissioner Casey.
4. Petitioner's Motion to Consolidate her Objection to Commissioner's Recommendation regarding attorney fees as entered March 21, 2018 is denied. A hearing is set in front of Judge Parker on June 27, 2018 at 4:00 p.m. At that hearing, Judge Parker will entertain Petitioner's Objection at that time, and if necessary, set further briefing scheduling and hearing date(s) as applicable for the determination of the attorney fees award, if applicable.
5. The parties have until May 7, 2018 at 5:00 p.m. to file an Objection to the above date and time set for the hearing.

END OF ORDER

**EXECUTED AND ENTERED BY THE COURT
AS INDICATED BY THE DATE AND SEAL
AT THE TOP OF PAGE 1**

[With Written Approval As To Form
And Content Omitted]

[Notice Pursuant To Rule 7 Of The Utah
Rules Of Civil Procedure Omitted]

[Certificate Of Service Omitted]

A21

IN THE UTAH COURT OF APPEALS

----ooOoo----

JAYDEN HUYNH,)	
Respondent,)	ORDER
<i>v.</i>)	Case No. 20180492-CA
DANIEL E. WITTE,)	
Petitioner.)	

Before Judges Orme, Christiansen Forster, and Harris.

This matter is before the court on a petition for permission to appeal from an interlocutory order filed pursuant to Rule 5 of the Utah Rules of Appellate Procedure.

IT IS HEREBY ORDERED that the petition for permission to appeal is denied.

Dated this 9 day of August, 2018.

FOR THE COURT:

/s/ Gregory K. Orme
Gregory K. Orme, Judge

A22

The Order of the Court is stated below: [SEAL]

Dated: November 23, 2018 /s/ Thomas R. Lee
01:25:06 PM Associate Chief Justice

**IN THE SUPREME COURT OF THE
STATE OF UTAH**

----ooOoo----

Jayden H. Huynh,
Respondent,
v.
Daniel E. Witte,
Petitioner.

ORDER
Supreme Court No.
20180824-SC
Court of Appeals No.
20180492-CA

Trial Court No. 134903429

----ooOoo----

This matter is before the Court upon a Petition for Writ of Certiorari, filed on October 10, 2018.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari is denied.

**End of Order – Signature at the Top of the First
Page**
