



2. [13-90481](#)-E-7 HENRY STACHER  
[13-9022](#)  
STACHER V. STACHER

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
6-21-13 [[1](#)]

Plaintiff's Atty: G. Michael Williams  
Defendant's Atty: Eric K. Alford

Adv. Filed: 6/21/13  
Answer: none

Nature of Action:  
Dischargeability - domestic support  
Dischargeability - divorce or separation obligation (other than domestic support)

**Final Ruling: The Status Conference is continued to 2:30 p.m. on March 27, 2014.** No appearance at the January 30, 2014 Status Conference is required.

Notes:

Continued from 12/19/13 to allow the parties the opportunity to consummate settlement negotiations.

[GMW-2] Motion for Entry of Default Judgment filed 12/20/13 [Dckt 30], set for hearing 1/30/14 at 10:30 a.m.

#### **JANUARY 30, 2014 STATUS CONFERENCE**

By final order the court granted Plaintiff's motion for summary judgment on the 10:30 January 30, 2014 calendar. The court continues the Status Conference as a calendaring device for the Plaintiff lodging with the court a judgment consistent with the order on summary judgment.

3. [13-90382-E-7](#) MICHAEL CARSON  
[13-9016](#)  
TAIPE V. CARSON

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
8-12-13 [[33](#)]

Plaintiff's Atty: Thomas P. Hogan  
Defendant's Atty: Robert D. Rodriguez

Adv. Filed: 4/10/13  
Amd Complt Filed: 8/12/13  
Answer: 11/14/13

Nature of Action:  
Dischargeability - divorce or separation obligation (other than domestic support)

Notes:

Continued from 11/21/13, the parties stated their stipulation resolving the nondischargeability on the record.

Motion for an Award for Attorney Fees and Costs filed 1/8/14 [Dckt 79], set for hearing 2/13/14 at 10:30 a.m.

Plaintiff's Continued Status Conference Statement filed 1/23/14 [Dckt 85]

### **JANUARY 30, 2014 STATUS CONFERENCE**

#### **Plaintiff's Status Conference Statement, Dckt. 85**

Plaintiff advises the court that the parties have stipulated that the right of offset pursuant to 11 U.S.C. § 553 is not dischargeable. The court issued an order stating the rights of the parties based on their stipulation, bringing to an end the non-dischargeability portion of this adversary proceeding.

Plaintiff has asserted the right to attorneys' fees in connection with this Adversary Proceeding. It is stated that an offer has been made by Plaintiff, which reduces the amount which Plaintiff otherwise believes she is entitled to recover.

Plaintiff has filed a motion for attorneys' fees, which is set for hearing on February 13, 2014. The amount of attorneys fees requested are \$10,562.00. This represents 28.5 attorneys hours of billing and 41.5 hours of paralegal and legal assistant billings. The points and authorities cite as authority for fees California Family Code §§ 2030, 2032, 3557.

#### **State Law Statutes Cite by Plaintiff**

§ 2030. Ordering party to pay to ensure other party's access to legal representation

(a) (1) In a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, and

in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation, including access early in the proceedings, to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a governmental entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

(2) When a request for attorney's fees and costs is made, the court shall make findings on whether an award of attorney's fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs. A party who lacks the financial ability to hire an attorney may request, as an *in pro per* litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.

(b) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(c) The court shall augment or modify the original award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of the proceeding, or any proceeding related thereto, including after any appeal has been concluded.

(d) Any order requiring a party who is not the spouse of another party to the proceeding to pay attorney's fees or costs shall be limited to an amount reasonably necessary to maintain or defend the action on the issues relating to that party.

(e) The Judicial Council shall, by January 1, 2012, adopt a statewide rule of court to implement this section and develop a form for the information that shall be submitted to the court to obtain an award of attorney's fees under this section.

§ 2032. Award to be just and reasonable

(a) The court may make an award of attorney's fees and costs under Section 2030 or 2031 where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties.

(b) In determining what is just and reasonable under the relative circumstances, the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320. The fact that the party requesting an award of attorney's fees and costs has resources from which the party could pay the party's own attorney's fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested. Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances.

(c) The court may order payment of an award of attorney's fees and costs from any type of property, whether community or separate, principal or income.

(d) Either party may, at any time before the hearing of the cause on the merits, on noticed motion, request the court to make a finding that the case involves complex or substantial issues of fact or law related to property rights, visitation, custody, or support. Upon that finding, the court may in its discretion determine the appropriate, equitable allocation of attorney's fees, court costs, expert fees, and consultant fees between the parties. The court order may provide for the allocation of separate or community assets, security against these assets, and for payments from income or anticipated income of either party for the purpose described in this subdivision and for the benefit of one or both parties. Payments shall be authorized only on agreement of the parties or, in the absence thereof, by court order. The court may order that a referee be appointed pursuant to Section 639 of the Code of Civil Procedure to oversee the allocation of fees and costs.

§ 3557. Attorney's fees for enforcement of support order or civil penalty for child support delinquency

(a) Notwithstanding any other provision of law, absent good cause to the contrary, the court, in order to ensure that each party has access to legal representation to preserve each party's rights, upon determining (1) an award of attorney's fees and cost under this section is appropriate, (2) there is a disparity in access to funds to retain counsel, and (3) one party is able to pay for legal representation for both parties, shall award reasonable attorney's fees to any of the following persons:

(1) A custodial parent or other person to whom payments should be made in any action to enforce any of the

following:

(A) An existing order for child support.

(B) A penalty incurred pursuant to Chapter 5 (commencing with Section 4720) of Part 5 of Division 9.

(2) A supported spouse in an action to enforce an existing order for spousal support.

**Defendant's Status Conference Statement, Dckt. 87**

Defendant concurs that the nondischargeability issues have been resolved, with the only remaining matter being Plaintiff's request for attorneys' fees. Defendant contends that the request is without merit and is being asserted to harass the Defendant.

Defendant directs the court to the California Judicial Council Statewide Rule for fees issues pursuant to Family Code § 2030. It is asserted that this Rule, as provided in the code section, bases an award of fees on the need as between the parties, not as a matter of right.

**California Rule of Court 5.427, Attorney's fees and costs**

(a) Application. This rule applies to attorney's fees and costs based on financial need, as described in Family Code sections 2030, 2032, 3121, 3557, and 7605.

(b) Request

(1) Except as provided in Family Code section 2031(b), to request attorney's fees and costs, a party must complete, file and serve the following documents:

(A) Request for Order (form FL-300);

(B) Request for Attorney's Fees and Costs Attachment (form FL-319) or a comparable declaration that addresses the factors covered in form FL-319;

(C) A current Income and Expense Declaration (form FL-150);

(D) A personal declaration in support of the request for attorney's fees and costs, either using Supporting Declaration for Attorney's Fees and Costs Attachment (form FL-158) or a comparable declaration that addresses the factors covered in form FL-158; and

(E) Any other papers relevant to the relief requested.

(2) The party requesting attorney's fees and costs must

provide the court with sufficient information about the attorney's hourly billing rate; the nature of the litigation; the attorney's experience in the particular type of work demanded; the fees and costs incurred or anticipated; and why the requested fees and costs are just, necessary, and reasonable.

(c) Response to request. To respond to the request for attorney's fees and costs, a party must complete, file, and serve the following documents:

(1) Responsive Declaration to Request for Order (form FL-320);

(2) A current Income and Expense Declaration (form FL-150);

(3) A personal declaration responding to the request for attorney's fees and costs, either using Supporting Declaration for Attorney's Fees and Costs Attachment (form FL-158) or a comparable declaration that addresses the factors covered in form FL-158; and

(4) Any other papers relevant to the relief requested.

(d) Income and expense declaration. Both parties must complete, file, and serve a current Income and Expense Declaration (form FL-150). A Financial Statement (Simplified) (form FL-155) is not appropriate for use in proceedings to determine or modify attorney's fees and costs.

(1) "Current" is defined as being completed within the past three months, provided that no facts have changed. The form must be sufficiently completed to allow determination of the issues.

(2) When attorney's fees are requested by either party, the section on the Income and Expense Declaration (form FL-150) related to the amount in savings, credit union, certificates of deposit, and money market accounts must be fully completed, as well as the section related to the amount of attorney's fees incurred, currently owed, and the source of money used to pay such fees.

(e) Court findings and order. The court may make findings and orders regarding attorney's fees and costs by using Attorney's Fees and Costs Order Attachment (form FL-346). This form is an attachment to Findings and Order After Hearing (form FL-340), Judgment (form FL-180), and Judgment (Uniform Parentage--Custody and Support) (form FL-250).

Defendant asserts that Plaintiff earns more than the Defendant and can pay her own legal fees. Further, that the motion for fees and supporting evidence are inadequate and do not (and in Defendant's contention cannot

truthfully) support the granting of attorneys' fees under the cited sections.

#### **SUMMARY OF COMPLAINT**

Plaintiff seeks to have a judgment in the amount of \$12,480.00, plus interest at the rate of 10% per annum from February 3, 2013 determined non-dischargeable pursuant to 11 U.S.C. § 523(a)(5), a domestic support obligation. It is asserted that the judgment is for sanctions issued by the family law court against the Defendant-Debtor relating to the Defendant-Debtor's prosecution of a child support claim against the Plaintiff. It is asserted that the stated court judge found that the Defendant-Debtor litigated the child support claim in bad faith.

The basis of the attorneys' fee award was California Family Code § 271, which provides,

§ 271. Basis and effect of award

(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. 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.

#### **SUMMARY OF ANSWER**

Admits and denies specific allegations. Admits jurisdiction and core matter. Answer states ten affirmative defenses.

#### **FINAL BANKRUPTCY COURT JUDGMENT**

