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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ASAP COPY AND PRINT et al., Plaintiffs, Cross-complainants and Appellants; NINA RINGGOLD, Appellant, v. CANON BUSINESS SOLUTIONS, INC., et al., Defendants, Cross-defendants and Respondents; GENERAL ELECTRIC CAPITAL CORPORATION, Defendant, Cross-complainant and Respondent, HEMAR ROUSSO & HEALD, Cross-defendant and Respondent.	B232801 (Los Angeles County Super. Ct. No. PC043358)

APPEAL from orders of the Superior Court of Los Angeles County, Barbara Marie Scheper, Judge. Affirmed in part; reversed in part; and remanded with directions.

Nina Ringgold, in pro. per., and for Plaintiffs, Cross-complainants and Appellants.

Dorsey & Whitney, Kent J. Schmidt and Lynnda A. McGlinn for Defendant, Cross-defendant and Respondent Canon Business Solutions, Inc.

Frandzel Robins Bloom & Csato, Andrew K. Alper and Alan H. Fairley for Defendant, Cross-defendant and Respondent Canon Financial Services, Inc.

Hemar, Rousso & Heald, Jeannine Del Monte Kowal for Defendant, Cross-complainant and Respondent General Electric Capital Corporation.

Appellants ASAP Copy and Print and Ali Tazhibi (collectively ASAP), and their attorney of record, Nina Ringgold, appeal from the trial court's orders awarding sanctions against Ringgold personally and in favor of respondents Canon Business Solutions, Inc. (CBS), Canon Financial Solutions, Inc. (CFS), and General Electric Capital Corporation (GE), payable to counsel for each. The orders awarded sanctions based on Ringgold's conduct in connection with an October 19, 2010 ex parte application and hearing and, in the case of CBS, additionally for a discovery violation.

We reverse the trial court's award of sanctions related to the ex parte application and remand for a new hearing on that issue. Although we affirm the award of discovery sanctions in favor of CBS, on remand the trial court must apportion that part of the original sanction award that pertains to the discovery violation.

BACKGROUND

This is the third appeal filed by ASAP and/or Ringgold we have heard in connection with this litigation.[1] The facts and history of this litigation are described, with relative detail, in our earlier unpublished opinion, and will not be recounted here. What follows are the facts strictly relevant to this appeal.

On March 24, 2010, the trial court granted CBS's motion to strike ASAP's first amended cross-complaint. In connection with the motion to strike, the trial court also

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[1] The two prior appeals, case Nos. B224295 and B225702, were consolidated and decided June 4, 2012. The trial court's rulings in favor of respondents were, with one minor modification, affirmed. ASAP has also filed two writ petitions, case Nos. B230553 and B233316, both of which were denied.

awarded sanctions, pursuant to Code of Civil Procedure section 128.7, in the amount of $5,977.37 against Ringgold in favor of CBS.[2] The court ordered the sanctions to be paid to counsel for CBS within 30 days.

Ringgold did not pay the sanctions as ordered. On July 28, 2010, CBS obtained an order for a judgment debtor's examination, set for September 2, 2010. Exhibit A to the order for examination requested that Ringgold produce a number of documents relevant to locating assets to satisfy the outstanding sanction award. In an abundance of caution, CBS also executed a deposition subpoena for the production of documents as well as a subpoena duces tecum for the same financial records. CBS personally served Ringgold with all of the documents described above on July 30, 2010.

Ringgold did not produce the documents as ordered by the subpoenas. Instead, on August 30, 2010, Ringgold filed objections to the order for a debtor's exam, the deposition subpoena, and the subpoena duces tecum. Her objection to the order for a judgment debtor's exam also contained an affirmative motion for a protective order and for sanctions against CBS. The same day she purported to serve the objections, by mail and facsimile, on CBS.

On September 2, 2010, Ringgold and counsel for CBS appeared in court. The trial court denied Ringgold's motion for a protective order as untimely, and overruled Ringgold's various objections on the merits. Further, the court ordered her to sit for the judgment debtor's exam to be conducted by counsel for CBS. Immediately prior to sending the parties out for the examination, the trial court stated:

"Ms. Ringgold, you're ordered by this court to sit for an examination that will be conducted by counsel, who have requested your appearance today, and to produce documents.

"Once counsel completes his examination, then all parties, Ms. Ringgold and counsel, are ordered to come back to this court, and if counsel feels that there has been incomplete compliance or no compliance, then we'll discuss what the next phase should be."

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[2] All statutory references are to the Code of Civil Procedure unless otherwise noted.

After completion of the examination, counsel for CBS returned to the courtroom. Ringgold, despite the trial court's order that she do so, did not. Counsel informed the court Ringgold either objected to or claimed lack of recollection in response to the majority of his questions. At counsel's request, the court continued the judgment debtor's examination to November 4, 2010. The court also set that date for a motion to compel production of the documents. The court issued an order to show cause regarding contempt for the same date, based upon Ringgold's failure to return to court after the examination. Finally, the court also issued and held a body attachment for Ringgold to the same date. Counsel for CBS served notice of the court's order upon Ringgold.

On October 6, 2010, CBS filed a number of motions for hearing on November 4: (1) a motion for sanctions against Ringgold pursuant to section 177.5 for failing to pay the March 24, 2010 sanction order within 30 days, for failing to produce documents and cooperate with the judgment debtor's exam on September 2, 2010, and for failing to return to court after the exam as ordered; and (2) motions to compel production of documents and for additional sanctions payable to CBS based upon Ringgold's noncompliance with the earlier document production request attached to the debtor's exam order, the deposition subpoena production request, and the subpoena duces tecum.

On October 18, 2010 at 2:57 a.m., Ringgold sent all three respondents' lawyers an e-mail informing them that on October 19 at 8:30 a.m. she would apply, ex parte, to the court for the following orders: (1) an order staying all proceedings, including the November 4 hearing, as an accommodation under the Americans with Disabilities Act (ADA; 42 U.S.C. § 12101 et seq.); (2) an order staying all proceedings, including the November 4 hearing, pending completion of the two appeals already filed; and (3) an order setting on calendar her motion to vacate various earlier orders of the trial court.[3]

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[3] With respect to the motion to vacate, the trial court had previously taken an identical motion off calendar, deciding that ASAP's earlier notices of appeal divested it of jurisdiction to hear the motion. Because Ringgold had purported to litigate certain issues in this case not only as counsel for ASAP but in propria persona and because this court had determined Ringgold to be a vexatious litigant during proceedings in another case, the trial court also ordered Ringgold to obtain a prefiling order from the presiding judge before she filed additional litigation in the immediate case.

The e-mail did not contain copies of any ex parte motion or points and authorities Ringgold intended to file.

Counsel for CBS and CFS sent return e-mails during the day on October 18 asking for copies of any paperwork Ringgold intended to file in support of the ex parte application. Ringgold did not respond to the e-mails.

During business hours on October 18, Ringgold submitted a form Request for Accommodations by Persons with Disabilities (ADA accommodation request) pursuant to rule 1.100 of the California Rules of Court.[4] Ringgold submitted the ADA accommodation request form, Judicial Council Form MC-410, under seal with an accompanying cover letter addressed to the supervising judge of the Chatsworth courthouse. Ringgold also submitted medical records in support of the request, again, under seal.

On October 19, each respondent's counsel appeared for the ex parte hearing. Ringgold did not appear, but sent another lawyer, Maureen Boyd, in her place. At the hearing, Boyd provided respondents' counsel with the ex parte application and memorandum of points and authorities filed on ASAP's behalf that morning. The ex parte application sought the relief described in the previous email, and specifically indicated Ringgold's disability required a stay of all proceedings, including the November 4 hearing, until December 27, 2010.

Ringgold obtained permission from the presiding judge to file, yet again, the motion to vacate. A review of that prefiling order, however, suggests that the presiding judge was unaware of the trial court's earlier ruling taking the matter off calendar since it does not state that the motion should be heard notwithstanding the pending appeal. The only basis for the presiding judge's order is that Ringgold's vexatious litigant status did not apply because she represented to the presiding judge the motion to vacate was on behalf of her client only and not in propria persona. (See *In re Natural Gas Antitrust Cases* (2006) 137 Cal.App.4th 387, 393-394.) Ringgold utterly fails to explain to this court what changed circumstances warranted refiling of a motion already determined by the trial court to be outside of its jurisdiction.

[4] All references to rules are to the California Rules of Court.

At the beginning of the hearing, the following exchange between court and counsel occurred:

"THE COURT: [¶] . . . [¶] The matter is here on plaintiff's ex parte application for what is being termed an accommodation under the Americans with Disability Act and essentially I understand among other things that Ms. Ringgold is requesting a stay of proceedings because of a medical emergency.

"I know counsel do not -- defense counsel don't have the documentation regarding the medical situation. I believe it is proper that that is filed under seal according to the court rules.

"I'm satisfied, I will tell counsel, that there is an emergency and so I will hear from you, but it would be my tentative ruling at this time -- the only thing I believe I'm aware of that is on calendar is the November 4th hearing, I believe, Mr. Cleveland [(counsel for CBS)], that we have on for your motions to compel and an order to show cause regarding contempt.

"[COUNSEL FOR CBS]: And a continued judgment debtor examination.

"THE COURT: Right. Did any of the other parties have anything pending?

"[COUNSEL FOR CFS]: No, Your Honor.

"[COUNSEL FOR GE]: No, Your Honor.

"THE COURT: So I would be inclined to go ahead and push that off into the first of the year to accommodate this situation.

"The other request, getting another motion on calendar, the court has explained itself repeatedly regarding that.

"I'm not sure you're up to speed on all that, Ms. Boyd, because the case has been rather extensively litigated, but the court has refused to hear any -- well, the particular motion that is the subject of Ms. Ringgold's application both because I believe it's stayed as a result of the appeal that's pending and because Ms. Ringgold has been personally determined to be a vexatious litigant. And I believe that has -- since she is now claiming a right to litigate this matter on her own behalf and not just as an attorney that she needs to get a prefiling order from downtown before the court will entertain any motions. I believe she did get permission to file something. I'm at a loss as to what it was. It [(the

permission order)] was very specific. [The presiding judge] issued that order but I don't know that that was ever put back on calendar.

"So whatever that motion was that was the subject of the prefiling order, it's up to Ms. Ringgold to get that on calendar if she wishes to pursue it. But the court is not on its own going to put anything on calendar.

"And I think the other -- there is one other issue I think that Ms. Ringgold's -- I believe she also requested that for any proceedings that do occur that she be permitted to appear by telephone.

"The court is going to decline that at this point, although that's without prejudice to Ms. Ringgold updating the court regarding her medication [*sic*] situation.

"So I guess with that being said, my proposal at this time is to deny the ex parte application in its entirety with the exception that the court will postpone the currently pending hearings brought by [CBS] and we'll pick a date in maybe January for those and then we'll see what the situation is at that point.

"Counsel wish to be heard?"

In response to the court's invitation, counsel for CBS urged the court to deny the ex parte application, in part because Ringgold had not set forth any facts justifying emergency relief. Counsel for CFS then pointed out that "professional courtesy and common sense" should have prompted Ringgold to contact opposing counsel informally about a stay based on a medical emergency, and that she should have proceeded with an ex parte application -- which necessitated the appearance of all counsel on short notice -- only if opposing counsel were uncooperative. Counsel for CFS also cited rule 3.1206, which requires ex parte applications to be served at the first reasonable opportunity. He advised the court he had only received the application that morning at the hearing. Boyd later advised the court Ringgold had dropped off the application and supporting paperwork at her house the evening before the hearing.

The court then issued a formal ruling. It denied the ex parte request to stay all proceedings pending completion of the appeal and to place the motion to vacate back on calendar. It granted the request to continue proceedings based on the ADA request, and put all pending matters over to January 26, 2011. It denied Ringgold's blanket request to

appear by telephone, in part because the continued contempt proceeding required her personal appearance, but did so without prejudice to Ringgold renewing the request based on additional medical evidence.

At counsel's request, the court also set the January date for "an order to show cause regarding sanctions related to the filing of this ex parte application." With respect to the sanctions issue, the court noted a number of facts: (1) the application, to the extent it sought to calendar a motion the court had already determined it had no jurisdiction to hear, was frivolous; (2) Ringgold failed to serve the ex parte application and points and authorities upon opposing counsel in a timely fashion; and (3) Ringgold failed to meet and confer with opposing counsel to determine whether the ex parte hearing was even necessary. The court's legal basis for the order to show cause was Ringgold's "failure to comply with local rules and California Rules of Court and under [Code of Civil Procedure section] 177.5 for bringing the defendants here today and I don't know that notice was proper." The court ordered counsel to file declarations regarding their costs on or before January 12, 2011, and for Ringgold to respond to the order to show cause on or before January 21. Counsel for CBS served written notice of the court's ruling.[5]

On January 14, 2011, after respondents' lawyers had submitted their cost declarations, Ringgold submitted another confidential ADA request, which sought to continue, for approximately one month, both the filing date for her sanctions response and the hearing on the sanctions issue. The medical records submitted in support of this request all predated the earlier ex parte hearing on October 19, 2010, and did not materially change the showing made in support of that earlier request. The trial court denied the request without a hearing. Ringgold then filed a notice of intent to use the ADA request review procedure pursuant to rule 1.100(g), which allows an expedited

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5 The minute order for the hearing mistakenly indicates that the court denied the ex parte application "in its entirety." A review of the reporter's transcript and the notice of ruling served by opposing counsel, however, shows that the court gave Ringgold the stay or continuance requested due to her medical condition, but denied the balance of the application for the reasons stated.

procedure for review of an ADA request denial by writ of mandate. The notice of intent also contained a notice that Ringgold would not appear at the January 26 hearing.

At the January 26 hearing, the trial court, in response to the notice of intent, continued the various matters on calendar to February 28, 2011. With respect to the sanctions issue, the court invited counsel to file supplemental declarations regarding costs expended in connection with the January 26 hearing. Ringgold did not appear at the January 26 hearing and did not send other counsel to appear for her. The court's clerk sent written notice of the continuance to Ringgold, and a copy of the court's tentative ruling on the motions to compel and requests for sanctions.

Ringgold filed a writ petition, but the Administrative Presiding Justice of this court ordered it stricken when Ringgold did not make the prefiling showing required of a vexatious litigant. (See § 391.7.) The Supreme Court denied Ringgold's petition for review.[6]

Ringgold neither appeared nor sent other counsel to appear for her at the February 28 hearing. Ringgold filed no opposition to the motions to compel or the order to show cause regarding sanctions. At the hearing, the trial court granted CBS's motions to compel and requests for related sanctions. Further, it made a number of findings with respect to Ringgold's October 19 ex parte application: (1) it was improperly noticed; (2) its "documentation" was insufficient; and (3) it was, in part, an improper request for reconsideration under section 1008. Accordingly, the court awarded sanctions against Ringgold and in favor of respondents as follows: (1) $9,260.60 to CBS for attorney fees associated with the motions to compel and both the October 19 and January 26 hearings; (2) $3,230.50 to CFS for attorney fees associated with the October 19 hearing; and (3) $1,305 to GE for attorney fees associated with the October 19 hearing. The court continued the contempt hearing, the hearing on sanctions payable to the court under section 177.5, and the judgment debtor's exam to April 29, 2011. Counsel for CBS gave notice of the continued hearing.

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[6] This court takes judicial notice of its record in case No. B230553 and the Supreme Court's record in case No. S191797 to establish these facts. (Evid. Code, § 452, subd. (d).)

With respect to the sanctions awarded at the hearing on February 28, the trial court signed and filed formal written orders submitted by respondents on the following dates: (1) March 1, 2011, for the award to GE; (2) March 10, 2011, for the award to CFS; and (3) April 27, 2011, for the award to CBS.

On April 29, Ringgold filed a notice of appeal from the formal sanction orders of March 1, March 10, and April 27. These notices are the basis of this appeal.

The same day, Ringgold also filed a motion to disqualify the trial court pursuant to sections 170.1 and 170.6. The trial court continued the hearing on the disqualification motion and on the other motions already calendared for April 29 to May 5. On May 2, Ringgold filed a request that the California Judicial Council select a judge to hear the disqualification motion and expressly objected to the trial court itself reviewing the motion. On May 4, Ringgold filed a supplemental verified statement in support of the motion to disqualify. On May 5, the trial court struck the motion for disqualification, finding it invalid on its face. Ringgold's petition for writ of mandate challenging the trial court's ruling was denied. Her petition for review in the Supreme Court was also denied.[7]

DISCUSSION

Ringgold makes a number of arguments against the sanctions awarded in connection with her October 19 ex parte application. First, she contends the trial court failed to rule on her October 18 ADA accommodation request and improperly denied her January 14 request. These errors, according to Ringgold, caused "structural error" that requires an automatic reversal of the sanction awards. Second, she contends sanctions

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[7] We take judicial notice of our records in case No. B233316 and those of the Supreme Court in case No. S194027 to establish these facts. (See fn. 6, *ante*.)

In terms of the procedural history of this appeal, we also note that on November 28, 2012, the day before the originally scheduled oral argument, Ringgold filed a notice of removal to the United States District Court pursuant to title 28 of the United States Code section 1443. This required a stay of oral argument to allow the district court to decide the removal petition. The district court rejected the petition and remanded the case back to this court on January 24, 2013.

cannot be awarded for abuse of the ex parte procedure because the trial court required her to follow that procedure in contravention of rules governing ADA accommodation requests. Next, she argues sanctions cannot be awarded because she did not receive adequate notice in the order to show cause. Finally, she argues the trial court abused its discretion in each award.

With respect to the discovery sanctions awarded to CBS in connection with its motions to compel, Ringgold contends her refusal to produce documents was not willful and, therefore, sanctions should not have been awarded. She also contends, for a variety of reasons, use of the judgment debtor's exam procedure was defective. She concludes, therefore, noncompliance with the related document requests and subpoenas cannot be the basis for sanctions. Finally, she also argues her motion for a protective order and for sanctions should have been granted.

Ringgold also argues the trial court demonstrated actual bias. It is unclear from her opening brief what specific relief she is asking for in connection with this argument. We assume she is seeking both removal of the judge from further proceedings and a reversal of the sanction awards because issued by a biased judge.

We reject all of these arguments but one. We agree Ringgold did not receive adequate notice of the legal basis of the potential sanction award in the court's order to show cause.

A. Failure to Rule on/Improper Denial of ADA Accommodation Requests

1. The October 18, 2010 Request

Pursuant to rule 1.100(e), the court "must promptly" inform an applicant of its determination to grant or deny an ADA accommodation request and, if the court denies such a request in whole or in part, it must do so in writing.

Ringgold's contention the trial court failed to respond to her October 18 ADA accommodation request completely misreads the substance of the record below. A common sense reading of the reporter's transcript from the ex parte hearing demonstrates the court granted the continuance requested by Ringgold based upon her disability, and did so to a date beyond that requested by Ringgold. The transcript also indicates while

the court denied her blanket request to appear telephonically -- at least in part because the pending contempt proceedings required Ringgold's personal appearance -- it did so without prejudice to Ringgold renewing the request based upon additional medical records. Ringgold was represented by counsel at the ex parte hearing, so she had constructive, if not actual notice, of the substance of this ruling.

Additionally, rule 1.100's requirement of a written notice was also satisfied. The written notice of ruling, filed and served upon Ringgold by counsel for CBS, accurately summarizes the court's oral ruling from the bench. It indicates both that the continuance had been granted and the request for appearance by telephone had been denied without prejudice.

That the clerk's transcript mistakenly characterizes the application as denied "in its entirety" does not change this fact. Unless circumstances dictate otherwise, a conflict between the reporter's transcript and the clerk's transcript should be resolved in favor of the reporter's transcript. (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 249.) We see no reason to depart from the general rule in this case. The reporter's transcript is not ambiguous and Ringgold had both constructive and actual notice of what occurred at the hearing.

2. The January 14, 2011 Request

The trial court did in fact deny the January 14 ADA accommodation request, finding, pursuant to rule 1.100(f)(3), it "fundamentally alter[ed] the nature of the service, program, or activity."[8] Ringgold contends the trial court erred and, again, "structural error" ensued rendering the sanction order void.

Rule 1.100(e)(2) requires a court, when reviewing an ADA accommodation request, to consider the provisions of the ADA along with those of Civil Code section 51 et seq. (the Unruh Civil Rights Act). Rule 1.100(f) sets forth three possible bases for denial of an accommodation request: (1) the applicant failed to satisfy the requirements

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8 We acknowledge that ADA accommodation requests are confidential. While we disclose, in parts of this opinion, portions of the two requests, we do so in general terms and only to explain our decision. Furthermore, and most importantly, we do so only to the extent Ringgold, in her opening brief, has already disclosed the same facts.

of the rule; (2) the requested accommodation would create an undue financial or administrative burden on the court; or (3) the requested accommodation would fundamentally alter the nature of "the service, program, or activity."

We agree with Ringgold that the stated ground for the denial was incorrect. Granting the request would not fundamentally alter the nature of the proceeding because the same proceeding would eventually occur, just at a later date. (See *In re Marriage of James & Christine C.* (2008) 158 Cal.App.4th 1261, 1276.) Nevertheless, we affirm the trial court's denial of the second ADA accommodation request. The medical records submitted by Ringgold in support of the request all predate the first request and do not in any way demonstrate Ringgold's medical condition required another continuance beyond that already granted. (See rule 1.100(f)(1).) Ringgold, therefore, failed to satisfy the requirements of rule 1.100. Accordingly, although the trial court erred in its stated basis for denial, we nevertheless affirm because the record supports the denial on a different ground. (*Miller v. Fresno Community Hospital & Medical Center* (2009) 172 Cal.App.4th 887, 906-907; *J.B. Aguerre, Inc. v. American Guarantee & Liability Ins. Co.* (1997) 59 Cal.App.4th 6, 15-16.)

B. Court Requirement of an Ex Parte Hearing

Rule 1.100(c), states that ADA requests may be made ex parte. It also provides that requests "must" be forwarded to the court's ADA access coordinator or designee in "as far advance as possible" and "in any event must be made no fewer than [five] court days before the requested implementation date."

Ringgold correctly contends rule 1.100 does not require compliance with the rules governing ordinary ex parte applications. Ringgold, however, has waived her claim that sanctions cannot be awarded because the trial court required her to make a formal ex parte application in contravention of rule 1.100. The only stated basis for this claim is the bare assertion in her opening brief that the trial court "informed" her law office that an ADA accommodation request required a formal ex parte application and hearing. Ringgold does not direct this court, by citation or otherwise, to any portion of the record on appeal that would provide an evidentiary basis for this bare assertion. Any claim

based on this assertion is not properly before this court and is therefore treated as waived. (*EnPalm, LLC v. Teitler* (2008) 162 Cal.App.4th 770, 775; *McComber v. Wells* (1999) 72 Cal.App.4th 512, 522; *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979; see *Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625 [assertions of fact not contained in the record on appeal may be disregarded].)

Even were we to reach the merits of this claim, we would still reject it. The record demonstrates that wholly separate from the ADA accommodation request, Ringgold used the ex parte procedure to request (1) a general stay of the proceedings based on the pending notices of appeal and (2) a new calendar date for the motion to vacate. Ringgold's argument, then, that she cannot be held accountable for abuses of the ex parte procedure because (1) the Rules of Court do not require a formal ex parte application for ADA requests and (2) the court ordered her, in contravention of the rules, to file one, completely ignores she combined matters unrelated to her ADA request in the ex parte application. The trial court expressly noted this fact at the ex parte hearing.

These additional requests violate the Rules of Court that govern ex parte applications. On their face, they are not of an emergent nature, and in her ex parte application, Ringgold did not even attempt to make the showing of irreparable harm or immediate danger required for proper ex parte matters. (Rule 3.1202(c).)

With respect to the request to calendar the motion to vacate, the ex parte application does, indeed, appear to be frivolous. The trial court had already determined it lacked jurisdiction to hear the motion and nothing had changed since that order. The use of ex parte proceedings to attempt to recalendar the motion was therefore an improper request for reconsideration in violation of section 1008. That the presiding judge had authorized the filing is of no consequence. Ringgold has directed us to no portion of the record that affirmatively shows the presiding judge was aware the trial court had already ruled it had no jurisdiction to hear an identical motion and the record, in fact, suggests otherwise. (See fn. 3, *ante*.) And, most importantly, Ringgold has not demonstrated any changed circumstance that would justify recalendaring a motion already determined by the trial court to be beyond its jurisdiction.

Finally, the record discloses Ringgold did not comply with the notice requirements of rule 3.1206. That rule sets forth the notice required for ex parte hearings: "Parties appearing at the ex parte hearing must serve the ex parte application or any written opposition on all other appearing parties at the first reasonable opportunity. Absent exceptional circumstances, no hearing may be conducted unless such service has been made." Ringgold made the determination to seek ex parte relief sometime before 2:57 a.m. on October 18, 2010, the day before the hearing. She provided counsel representing her with the application and supporting documents on the evening of October 18. Respondents' counsel did not receive the application and supporting documents until they arrived in court on the morning of the hearing. This record more than supports a finding that Ringgold failed to serve opposing counsel "at the first reasonable opportunity."

Thus, a significant portion of Ringgold's ex parte application -- entirely separate from her ADA accommodation request -- violates various rules governing ex parte applications. Such conduct, if unexplained at a hearing on a properly noticed order to show cause, by itself warrants sanctions under various statutes and rules of court. (See, e.g., § 128.7, subd. (c)(2), § 1008, subd. (d); rules 2.30, 3.1202(c), 3.1206.)

C. Insufficient Notice in the Order to Show Cause

Next, Ringgold claims she was not provided adequate notice in either the order to show cause or the orders ultimately awarding sanctions. For the reasons that follow, we agree the notice contained in the order to show cause was inadequate.

Due process requires notice and an opportunity to be heard *prior* to the imposition of sanctions. (*Barrientos v. City of Los Angeles* (1994) 30 Cal.App.4th 63, 70.) While a trial court may raise the issue of sanctions on its own motion, it must nevertheless give notice of its intent to impose sanctions. (*Bergman v. Rifkind & Sterling, Inc.* (1991) 227 Cal.App.3d 1380, 1387.) The adequacy of any notice to impose sanctions must be determined on a case-by-case basis. The factors to be considered include the conduct prompting the imposition of sanctions, as well as the potential dollar amount of the sanctions. (*Seykora v. Superior Court* (1991) 232 Cal.App.3d 1075, 1081.) The purpose

of adequate notice is twofold: to (1) advise the responding party that the court is considering sanctions and (2) give the party an opportunity to prepare for the hearing on the issue of sanctions. (*Ibid.*)

Due process also requires notice of the reasons for sanctions *after* an award of sanctions. The purpose of adequate subsequent notice is also twofold: it allows (1) the offending party to argue against these grounds on appeal and (2) the appellate court to conduct a meaningful review of the award. (*Olson Partnership v. Gaylord Plating Lab, Inc.* (1990) 226 Cal.App.3d 235, 240-241; see *Caldwell v. Samuels Jewelers* (1990) 222 Cal.App.3d 970, 977-978.)

As mentioned previously, Ringgold's conduct in connection with the October 19 ex parte application potentially warrants sanctions under a variety of court rules and statutes: rules 2.30, 3.1202(c), 3.1206, and sections 128.7, subdivision (c)(2), and 1008, subdivision (d). And the posthearing orders, prepared by the parties, signed by the court, and filed on March 1, March 10, and April 27, do cite to some of these authorities. The prehearing notices -- the court's oral order to show cause and CBS's subsequent notice with respect to that order -- however, cite to none of these authorities. While the court's oral order and CBS's notice of that order do cite to a violation of the Rules of Court generally, their only specific citation is to section 177.5. That section, however, cannot provide authority for the awards in this case since it only authorizes sanctions up to $1,500 that are "payable to the court."

Each of the various authorities referenced in this opinion or cited by the parties in the sanction orders has different requirements. Rule 2.30 authorizes sanctions, payable "to the court or an aggrieved person, or both, for failure without good cause to comply with the applicable [R]ules [of Court]."[9] Section 128.7 authorizes sanctions payable to the court, or reasonable attorney fees payable to a party, in connection with filed

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9 Rule 2.30(c), also expressly requires that the order to show cause cite to the particular rule violated, something that was not done in the immediate case. It appears, though, that Ringgold potentially violated at least two rules: (1) rule 3.1202(c), which requires an ex parte application to demonstrate irreparable harm or immediate danger and (2) rule 3.1206 which requires service of ex parte papers at the "first reasonable opportunity."

pleadings or motions not supported by fact or law or filed for an improper purpose. Section 1008 incorporates section 128.7, and permits sanctions to the court or reasonable attorney fees to a party where a party resubmits "an application for an order" that has already been denied and does not by affidavit show a material change in the law or facts underlying the application.

Thus, rule 2.30 requires violation of a specific Rule of Court without good cause, section 128.7 requires a pleading or motion filed in bad faith or based upon a position that is legally or factually untenable, and section 1008 requires resubmission of a denied application without a material change in facts or law. These different elements necessarily require different defenses and different preparations for the party accused of conduct justifying sanctions. As stated earlier, the adequacy of notice is to be determined on a case-by-case basis. (*Seykora v. Superior Court*, *supra,* 232 Cal.App.3d at p. 1081.) While we are not prepared to state this as a requirement in all cases, *under the circumstances of the present case*, the failure in the order to show cause to cite to the specific authority or authorities that authorized sanctions violates due process. Without knowledge of the specific rules or statutes alleged to have been violated, Ringgold could not meaningfully prepare a defense.

This determination, however, does not mean conduct warranting the imposition of sanctions did not occur. As we have explained in this opinion, Ringgold's conduct potentially justifies sanctions under various authorities. Accordingly, although we reverse the sanction orders, we remand so the trial court may issue an order to show cause that contains proper notice and then conduct a new hearing on the issue of sanctions related to the October 19 ex parte application. (See *In re Marriage of Quinlan* (1989) 209 Cal.App.3d 1417, 1423.)

D. Abuse of Discretion

Because we remand for a new hearing on the issue of sanctions, we need not and therefore do not address Ringgold's contention that the sanction awards were an abuse of discretion.

E. Discovery Sanctions to CBS

Ringgold contends the discovery sanctions awarded to CBS in connection with its motions to compel must be reversed for several reasons. First, she contends her failure to produce documents was not willful because of her medical situation, and thus not subject to sanctions. Next, she contends the entire judgment debtor proceeding was defective because the March 24, 2010 order made the sanctions payable to counsel for CBS, not CBS; as a result, her debtor relationship was to counsel, not CBS; and, therefore, the judgment debtor examination order obtained by CBS, rather than counsel for CBS, was invalid. Ringgold also argues the examination conducted on September 2, 2010, violated the Code of Civil Procedure because it was conducted outside the courtroom by counsel for CBS and not before the court or before a court-appointed referee. Finally, Ringgold argues the subpoena duces tecum was not applicable to judgment debtor's proceedings and did not contain the required notice to clients whose records might be affected.

For the reasons that follow, we find none of these arguments meritorious and thus affirm the award of discovery sanctions to CBS. The written sanction award, however, does not apportion the total amount of sanctions between those related to the October 19 ex parte hearing and those related to the discovery issue. On remand, therefore, the trial court will have to apportion the amount already awarded that is attributable to the discovery sanctions and then conduct the new hearing for any additional amounts to be awarded in connection with the ex parte hearing.

1. Willful Failure to Comply

Discovery sanctions may be imposed where (1) a party fails to comply with a lawful discovery order, and (2) the failure to comply is willful. (*Calvert Fire Ins. Co. v. Cropper* (1983) 141 Cal.App.3d 901, 904.) An order awarding discovery sanctions is reviewed for abuse of discretion. (*Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545.)

At the judgment debtor's examination on September 2, 2010, the trial court ordered Ringgold to produce the requested documents. When the court granted the motions to compel and awarded sanctions on February 28, 2011, Ringgold still had not

complied with that order. Ringgold's bare assertion on appeal she could not comply with the order as late as February 28, 2011 -- nearly five months after CBS filed the motions to compel and two months past the continuance date she requested in her initial ADA accommodation request -- because of her medical condition is not supported by any citation to the record and is therefore deemed waived. (*EnPalm, LLC v. Teitler, supra,* 162 Cal.App.4th at p. 775; *McComber v. Wells, supra,* 72 Cal.App.4th at p. 522; *Kim v. Sumitomo Bank, supra,* 17 Cal.App.4th at p. 979; see *Kendall v. Barker, supra,* 197 Cal.App.3d at p. 625.) To the extent Ringgold's claim is that her first ADA accommodation request and records contained therein establish her continued noncompliance through February 28 was due to a medical emergency, we disagree. Ringgold has not demonstrated an abuse of discretion.

2. Sanctions Payable to Counsel for CBS

This argument is entirely frivolous. Counsel for CBS brought the original sanction motion on behalf its client. The court granted the motion and ordered sanctions based on the attorney fees expended by counsel in connection with striking the first amended cross-complaint. That the trial court ordered the sanctions payable to counsel rather than payable to CBS, under these circumstances, is immaterial. The sanctions order was in favor of CBS based on a motion filed on behalf of CBS. The order for a judgment debtor's exam obtained by CBS was not therefore defective.

3. Debtor's Examination Not Before Court or Referee

We need not address whether or not the actual examination of September 2 was properly conducted under the Code of Civil Procedure. (See § 708.110 et seq.) That issue is immaterial to the issues raised in this appeal. The trial court awarded sanctions because of willful noncompliance with an order requiring the production of documents, not because of willful refusal to answer questions at the actual debtor's examination.

4. Inapplicability of Subpoena Duces Tecum

Ringgold's argument in this regard is entirely conclusory and devoid of analysis. This argument is therefore deemed waived. (*McComber v. Wells, supra,* 72 Cal.App.4th at p. 522; *Kim v. Sumitomo Bank, supra,* 17 Cal.App.4th at p. 979.)

F. Denial of Ringgold's Protective Order and Sanctions Request

As mentioned earlier, prior to the September 2, 2010 judgment debtor's exam, Ringgold not only filed objections to the document production requests, but also affirmatively sought a protective order and sanctions against CBS. The trial court denied both of Ringgold's requests. In this appeal, Ringgold asks us to reverse the trial court, issue the protective order, and award her sanctions against CBS.

We decline to do so. Ringgold's notice of appeal is from the orders awarding sanctions in favor of GE, CFS, and CBS dated March 1, March 10, and April 27, 2011. She has raised no issue connected to the appeal from these orders that requires us to address the propriety of the trial court's denial of her affirmative requests for a protective order and for sanctions. Thus, those orders are not properly before us on this appeal and we decline to review them.

G. Bias of Trial Judge

Ringgold raised this issue in the combined appeals previously decided by this court. We decided this issue against her in the earlier appeals, and do so again here. A review of the record below, including events that occurred subsequent to the record in the earlier appeals, demonstrates absolutely no evidence of judicial bias on the part of the trial court.

DISPOSITION

The orders dated March 1, March 10, and April 27, 2011, awarding sanctions to GE, CFS, and CBS for Ringgold's conduct related to the October 19 ex parte application are reversed. That portion of the April 27 order awarding discovery sanctions in favor of CBS is affirmed.

The case is remanded to the trial court. On remand, the court is to apportion that part of the sanction award to CBS attributable to the discovery violation and order it to be paid. The court is also to issue a new order to show cause and to hold a new hearing on the issue of sanctions related to the October 19 ex parte hearing.

The parties are to bear their own costs on appeal.

SORTINO, J.*

WE CONCUR:

BOREN, P. J.

CHAVEZ, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.