

Tentative Rulings

Law & Motion and Family Law Calendar for July 24, 2017

July 20, 2017, 4:00p.m.

Department Two

To request a hearing on any matter on this calendar, you must call the Court at 530-283-6305 by 12:00 noon, July 21, 2017. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

If you appear and want the matter reported by a court reporter in unlimited civil, family law or probate, you must contract with and provide your own court reporter. The Court does not provide an official reporter for these calendars.

Probate - 9:00 a.m.

Case No. PR16-00028 - Conservatorship of Zeiner

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. The court has reviewed the amended petitions and reports and intends to grant the Petition for Reappointment of Conservator of the Person and Appointment of the Conservator of the Estate, for a period of one year.

Case No. PR15-00027- Conservatorship of Thomas

Tentative Ruling: **Granted, upon proof of service of the citation.** The court has reviewed the petition and reports and intends to grant the Petition for Reappointment and Appointment, for a period of one year.

Case No. PR17-00031 - Estate of Griffin

Tentative Ruling: **Granted, upon proof of publication.** If proof is filed prior to the hearing, the court intends to grant the petition. Petitioner is to prepare the Order.

Case No. PR08-6412 and 6413- Guardianship of Kelley

Tentative Ruling: **Appearance required.**

Case No. PR14-00027 and 28 - Guardianship of Tuell and Zimmerman

Tentative Ruling: **No appearance required.** The court has received and reviewed the confidential guardianship status reports. The court finds it is in the minors' best interests to continue the guardianship. The court will set the annual review hearing for July 23, 2018, at 9:00a.m. The clerk of the court is reminded to send notice to the guardian one month prior to this date, informing the guardian of the duty to file a confidential status report prior to the review hearing.

Case No. PR13-00021 - Matter of Kaufman

Tentative Ruling: **No appearance required.** The court has received and reviewed the confidential guardianship status report. The court finds it is in the minor's best interests to continue the guardianship. The court will set the annual review hearing for July 9, 2018, at 9:00a.m. The clerk of the court is reminded to send notice to the guardian one month prior to this date, informing the guardian of the duty to file a confidential status report prior to the review hearing.

Case No. PR17-00029 - Matter of Lang

Tentative Ruling: **Appearance required.** The court notes there is no Certificate of Trust attached.

Case No. PR115-00022 - Estate of Vincent

Tentative Ruling: The court **denies** objector's Request for further Findings on Creditor's Claim or the Alternative Motion for Reconsideration. The court has exercised its discretion in not awarding costs.

The court **grants, in part,** attorney Schaller's Motion for Supplemental Extraordinary Attorney's fees. Although Mr. Schaller has not provided the required statement of facts pursuant to Rule 7.702 of the California Rules of Court, he has provided a detailed accounting of the services performed and hourly rate for those services.

In this case, Schaller sought fees for services he provided to the personal representative, Fugh in defending her accounting. These are extraordinary services within the meaning of Probate Code section 10811, and as such, this court has discretion to award extraordinary fees to the attorney providing these services. The court does not find that Vincent's objection to the accounting was without reasonable cause or in bad faith, and therefore, does not consider any such allegations against Vincent, as set forth in Schaller's petition for fees.

On the other hand, Mr. Schaller did defend the personal representative at trial as a result of Vincent's objections to her accounting. The majority of the trial concerned the personal representative's creditor's claim, for which she had separate representation. The only issue at trial regarding the accounting was whether the personal representative took property from the estate and kept or sold it for her own personal use. The alleged property consisted of used tools, guns, coins and cash, and there was insufficient evidence presented at trial for the court to conclude these items existed or had any additional value beyond the accounting. There were certainly no complicated issues presented at trial. In fact, the court believes this case could have resolved without a trial, except for the personal representative's unauthorized creditor's claim.

In exercising its discretion to award extraordinary fees, the court necessarily took into consideration the value of the estate, the work performed by the attorney in the routine administration, and the amount to which the attorney would legally be entitled, calculated according to the provisions of the Probate Code. In this case, the total estate is quite small, with very little cash or property left. The court has considered that any funds to pay Schaller's fees might require the sale of estate property, assets that would have gone to Vincent. The court has also considered the extent to which the attorney services benefited the estate. Finally, as much of the litigation in this case concerned Fugh's creditor's claim, the court has considered that Vincent prevailed in his objection to the creditor's claim, and the court did not award attorney fees and costs to him.

Here, the court finds Schaller generally acted consistent with his fiduciary duties in his work on behalf of the estate. However, the court also finds that some of the work was unnecessary and as a result, reduces his total fee request. The amount requested of over \$60,000 in extraordinary fees is simply not reasonable, nor just. The court will order \$7,000 in extraordinary attorney fees. In its discretion, the court will not award costs.

Civil - 9:30 a.m.

Case No. CV16-00181 - Beever vs. Bringham

Tentative Ruling: **Appearance required.** The court will hear the evidence on the quiet title action.

Case No. CV16-00121 - Greene vs. Miller

Tentative Ruling: **Denied.** The motion by cross-complainant Janet Miller ("Miller") for clarification of this Court's ruling on her motion for summary adjudication, entered on May 23, 2017 ("Ruling"), is denied.

Miller sought summary adjudication of two issues. (See, Miller's Notice of Motion and Motion for Summary Judgment and Adjudication, filed herein December 12, 2016.) Issue One stated that the cross-defendants had no defense to the first cause of action, for declaratory relief; Issue Two stated that they had no defense to the second cause of action, for quiet title. (*Id.*, pp.2:18-20, 3:16-18.) Miller listed a number of "sub issues" for both Issues, one of which related to the cross-defendants having no easement, and another to Miller having an easement, across Musso Drive. (*Id.*, pp. 2:21-3:25.)

Summary adjudication of Issue One and Issue Two was denied, because triable issues of material fact existed as to whether a subdivision map and declaration, recorded by the owners who created the subdivision, also created an easement across Musso Drive that is appurtenant to all parcels. (Ruling, pp. 5-6.)

"A motion for summary adjudication shall be granted only if it *completely* disposes of a cause of action, an affirmative defense, a claim for [exemplary] damages or an issue of duty." (*Code of Civil Procedure section 437c(f)(1)*). (Italics added.) Accordingly, Miller's request that this Court "clarify" the Ruling as to the sub issue of whether she has an easement by necessity or prescription across Musso Drive is denied. However, the Ruling is hereby clarified, insofar as the reference to "Miller's second and third causes of action," at page 4, footnote 2, shall be amended to read "Miller's first and second causes of action."

Case No. CV10-00014 - Morgan vs. Feather River Rail Society

Tentative Ruling: **Granted.** Defendant's Motion for Order Enforcing Judgment Pursuant to Terms of Stipulation for Settlement is granted. The court has received no opposition.

Case No. CV16-00174 - Taylor vs. West Almanor Community Club

Tentative Ruling: **Denied.** Defendant's motion to strike the first amended complaint ("FAC") is denied. Defendant's request for judicial notice is granted. Defendant seeks an order striking the FAC on the sole grounds that it is untimely under the provisions of *Rule 3.1320(g)* of the *California Rules of Court*. There is, however, ". . . 'no absolute right to have a

pleading stricken for lack of timeliness in filing where no question of jurisdiction is involved, and where, . . ., the late filing was a mere irregularity. . .'. (McAllister v. County of Monterey (2007) 147 Cal.App.4th 253, 281. (Citations omitted.) Further, after a demurrer is sustained with leave, a trial court has discretion to accept the late filing of an amended pleading without requiring a noticed motion, so long as such filing ". . . does not affect the substantial rights of the parties." (Harlan v. Department of Transportation (2005) 132 Cal.App.4th 868, 873.) There being no impairment of the defendant's substantial rights, the Court accepts the late filing of the FAC. Defendant shall have 30 days from the date of this order in which to respond to the FAC.

Family Law - 10:30 a.m.

Case No. FL16-00100 - Bancale vs. Solis

Tentative Ruling: **Appearance required.** The court will discuss the custody evaluation with the parties.

Case No. FL17-00074 - Correll vs. Wissar

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

Case No. FL14-00118 - Moore vs. Woods

Tentative Ruling: **Appearance required.** The court orders the parties to complete and file new income and expense declarations prior to the hearing, in order to determine the payment for the custody evaluation review.

Case No. FL16-00231 - Norton vs. Williams

Tentative Ruling: **Appearance required.** The court has not received the mediated agreement.

Case No. FL14-00043 - Mar. of Patterson

Tentative Ruling: **Appearance required.** The court has not received the review report.

Case No. FL15-00074 - Mar. of Phillips

Tentative Ruling: **Appearance required.**

Case No. FL14-00105 - Strassburg vs. Pearce

Tentative Ruling: **Appearance of Respondent is required.** OSC on contempt.

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. LC17-00013 - Cavalry SPV vs. Pallansch

Tentative Ruling: **No appearance required.** The court notes this is a collections case. This matter is continued to January 11, 2018, at 1:30p.m., pursuant to Rule 3.740(f). If the plaintiff has not obtained a default judgment by said date, this matter will be set for an order to show cause and sanctions may be imposed. The court further notes there is no "judgment package" that has been submitted to the court, contrary to counsel's representation in his CMC statement.

Case No. LC17-00012 - Portfolio Recovery Associates vs. Venneri

Tentative Ruling: **No appearance required.** The court notes this is a collections case. This matter is continued to January 11, 2018, at 1:30p.m., pursuant to Rule 3.740(f). If the plaintiff has not obtained a default judgment by said date, this matter will be set for an order to show cause and sanctions may be imposed.

Case No. FL16-00129 - Welch vs. Harris

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

Case No. LC16-00122 - Bank of America vs. Coons

Tentative Ruling: **Appearance required.** The court has not received the notice of settlement.

Case No. FL12-00232 - Butts vs. Kilby

Tentative Ruling: **Appearance required.**

Case No. CV16-00091 - Haro-Vasque vs. Feather River College

Tentative Ruling: **Appearance required.** The parties should be prepared to set a new trial date, and discuss ADR options.

Case No. CV16-00014-J&S Custom Homes, Inc. vs. Nakoma Associates, LP

Tentative Ruling: **Appearance required.**

Case No. CV16-00165 - Merrett vs. Twenty Mile House, LLC

Tentative Ruling: **Appearance required.** The court will confirm a mediator and date for mediation.

Case No. CV16-00174 - Taylor vs. West Almanor Community Club

Tentative Ruling: **No appearance required.** The court continues this case management conference to August 28, 2017, at 2:00p.m., in order to allow responsive pleadings to be filed in response to the First Amended Complaint.

CV16-00107 - Terry vs. Sasser

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

Case No. FL13-00169 - Mar. of Wisniewski

Tentative Ruling: **No appearance required.** The court has signed the mediated agreement.