

## **Tentative Rulings**

### **Law & Motion and Family Law Calendar for July 9, 2018**

July 5, 2018, 4:00 p.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 6, 2018. 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. PR18-00009 – Conservatorship of Tavis**

Tentative Ruling: **Appearance required.** The Court will discuss the costs of investigation report.

#### **Case No. PR18-00026 – Estate of Beever**

Tentative Ruling: **Approved. No appearance required.** Based upon the Petition and Declaration of Debra Beever, the Court grants the Petition to Determine Succession to Real Property filed by Ronald Kelly and Debra Beever and further grants the orders regarding the sale of the property. The Spousal Property Petition filed by Jeffrey Kelley is denied.

#### **Case No. PR15-00012 – Estate of Patel**

Tentative Ruling: **Approved. No appearance required.** The Court finds that notice has been given as required by law. The Petition for Distribution of Additional Estate Property is approved. Counsel for Administrator shall prepare the Order for signature.

#### **Case No. PR09-00001 – Guardianship of Martin**

Tentative Ruling: **No appearance required.** The Court has received and reviewed the Confidential Guardianship Status Report and the Court finds it is in the minor's best interests to continue the guardianship. The Court will set the next annual review hearing for July 8, 2019, at 9 a.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. PR18-00018 – Guardianship of Bagby**

Tentative Ruling: **Appearance required.** The Court will discuss the status of visitation for the minor with the Eidhammers. Additionally, the Court will discuss the status of family counseling and parenting classes for the Wolfords.

**Case No PR16-00018 – Guardianship of Litz**

Tentative Ruling: **Appearance required.** The Court has not received the Confidential Guardianship Status Report and orders the review hearing be continued to August 6, 2018, at 9:00 a.m. A copy of this Order is to be sent to the guardians and they are to be personally present on that date.

**Case No. PR13-00019– Guardianship of McKinney**

Tentative Ruling: **No appearance required.** The Court has received and reviewed the Confidential Guardianship Status Report and the Court finds it is in the minor's best interests to continue the guardianship. The Court will set the next annual review hearing for July 8, 2019, at 9 a.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. PR18-00013 – Matter of Walter W. Methner Trust**

Tentative Ruling: **No appearance required.** Based upon the Declaration filed July 3, 2018, good cause exists to dispense with notice to Henry and Paul Smith. The Court finds that notice has been given as required by law. The Court will grant the Petition to Appoint Successor Trustee and sign the proposed order.

**Case No. PR13-00021 – Matter of Kaufman**

Tentative Ruling: **No appearance required.** The Court has received and reviewed the Confidential Guardianship Status Report and the Court finds it is in the minor's best interests to continue the guardianship. The Court will set the next annual review hearing for July 8, 2019, at 9 a.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. PR13-00020 – Matter of McKinney**

Tentative Ruling: **No appearance required.** The Court has received and reviewed the Confidential Guardianship Status Report and the Court finds it is in the minor's best interests to continue the guardianship. The Court will set the next annual review hearing for July 8, 2019, at 9 a.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.

## Civil – 9:30 a.m.

### Case No. CV18-00029 – Pleau vs. Estate of Felber

Tentative Ruling: **Denied.** The motions by plaintiffs, James and Antoinette Pleau (collectively “Pleau”), to compel responses to discovery without objection, for a protective order and for sanctions are denied. The Pleau’s Request for Judicial Notice is granted in part as stated below. Pleau shall serve responses to the discovery propounded by Defendant, the Estate of Felber (“Estate”), by August 17, 2018. Estate shall recover a total of \$1,897.50 from Pleau and their attorney as sanctions.

#### **Motion to Compel**

An action may be brought against a decedent’s estate “. . . to establish the decedent’s liability for which the decedent was protected by insurance . . . without the need to join as a party the decedent’s personal representative . . .” (*Probate Code section 550(a)*) and without first filing a claim in the probate proceedings. (*Probate Code section 9390(a)*.) The estate shall be named as the defendant in such an action, and the summons is to be served on the decedent’s insurance company. (*Probate Code section 552(a)*.) Accordingly, service of the summons and complaint on AMCO Insurance Company, the decedent’s insurer (“AMCO”), was effective as to the Estate.

The statute does not, however, authorize service of any other pleading or document on a decedent’s insurance carrier. Instead, “[f]urther proceedings shall be in the name of the estate, but otherwise shall be *conducted in the same manner as if the action were against the personal representative.*” (*Ibid.* (Emphasis added.)) Accordingly, the discovery propounded by Pleau should have been served on the personal representative of the Estate, Cheryl Felber (“Felber”), who is named as a defendant herein (and thus need not be substituted in under *Probate Code section 552(b)*). (*See, Code of Civil Procedure sections 2030.010, 2031.010, 2033.010* (interrogatories, demands for inspection and request for admissions to be served on parties).)<sup>1</sup>

Accordingly, there was no effective service of the discovery on the Estate. However, its responses were served on Pleau’s counsel by mail on May 17, 2018, with verifications following on May 22, 2018. (Connolly Decl., paras. 13-14; Exhibit J.) Ralph received the verifications on May 25, 2018, but the original responses were not delivered until May 29, 2018. (Memorandum of Points and Authorities in Support of Reply, filed June 29, 2018 (“Reply”), pp.15:23-16:4.) The only apparent inadequacy of these responses is that they contain “waived” objections. (*Id.*, p.16:8-9.)

---

<sup>1</sup> A letter dated March 8, 2018 informed Jesse Ralph (“Ralph”), counsel for Pleau, that Thomas Connolly (“Connolly”) was counsel for the Estate. (Declaration of Connolly in Support of Opposition to Motion to Compel, filed June 25, 2018 (“Connolly Decl.”), para.5, Exhibit C.) Ralph was also aware, as of March 12, 2018, that Felber had been appointed as the personal representative of the Estate. (Ralph Declaration in Support of Motions, filed May 25, 2018 (“Ralph Decl.”), para.4.) No explanation is provided as to why, on March 16, 2018, the discovery propounded on the Estate was served on AMCO’s agent for service of process, rather than on Connolly, the Estate’s counsel. (*See, Exhibit 9 to Pleau Evidence Compendium, Volume I*, filed May 25, 2018 (“Evidence Compendium”); Ralph Decl., para. 6.)

There being no effective service of the discovery, there was no waiver of objections for failure to timely respond under *Code of Civil Procedure sections 2030.290(a), 2031.300(a) or 2033.280(a)*. The motion to compel is thus denied.

### **Motion for Protective Order**

The Estate has served verified responses to Pleau's discovery, rendering the motion for a protective order preserving the order of discovery moot. Pleau also seek a protective order limiting discovery, because the Estate propounded extensive written discovery after failing both to respond to Pleau's discovery and to allow inspection of the property in a timely fashion. (Points and Authorities for Motion . . . for Protective Order, filed May 25, 2018, pp. 6:11-7:5; Ralph Decl., para. 26.)

A review of the Estate's written discovery (Evidence Compendium, Volume II, Exhibits 1-10) discloses that it appears to be calculated to elicit facts relevant to the issues raised in this action, *i.e.*, the cause, and damages sustained as a result, of the fire. (*See*, Complaint, filed February 23, 2018 ("Complaint"), *e.g.*, pp.7:23-8:20, 9:1- 11:23; 13:3-14:12.) Pleau have thus failed to establish that good cause exists to issue a protective order. (*Code of Civil Procedure sections 2030.090(b), 2031.060(b), 2033.080(b); see, e.g., Harris v. Sarpas* (2014) 225 Cal.App.4th 1539, 1552-1553 (substantial evidence supported findings that discovery was oppressive, burdensome or expensive).)<sup>2</sup>

Accordingly, the motion for a protective order limiting the scope, frequency, use and methods of discovery is denied. To the extent Pleau served incomplete responses to the Estate's written discovery in reliance on their objections (*see*, Declaration of Connolly in Support of Opposition to Motion for a Protective Order, filed June 25, 2018 ("Connolloy PO Decl."), at para. 23), further responses and verifications shall be served by Pleau on the Estate by August 17, 2018.

### **Sanctions Terminating, Issue or Evidentiary**

"A terminating sanction is appropriate in the first instance without a violation of prior court orders in *egregious cases of intentional spoliation of evidence.*" (*Williams v. Russ* (2008) 167 Cal.App.4th 1215, 1223 ("Williams") (Emphasis added.).) A party moving for such sanction,

". . . must make an initial *prima facie* showing that the responding party in fact destroyed evidence that had a substantial probability of damaging the moving party's ability to establish an essential element of his claim or defense." *Id.*, at 1227.

Pleau have not met this burden. None of the conduct which Pleau assert caused the spoliation (Points and Authorities in Support of Motion for Terminating, Issue, Evidentiary and/or

---

<sup>2</sup> While the number of special interrogatories propounded by the Estate exceeds the statutory limit (*see, Code of Civil Procedure section 2030.030*), Pleau do not expressly seek a protective order on this ground. However, as detailed above, all discovery appears to be related to issues raised in the Complaint. (*See, also*, Declaration for Additional Discovery, Evidence Compendium, Volume II, Exhibits 3, 4; *Code of Civil Procedure section 2030.040*; *see, also*, Declaration of Connolly in Support of Opposition to Motion for a Protective Order, filed herein June 25, 2018, para. 17.)

Monetary Sanctions, filed herein May 25, 2018, pp.9:15-10:18) tends to show that AMCO or the Estate “. . . in fact destroyed evidence.” (*Williams, supra*, at 1227.) Further, no legal authority is cited, or could be found, suggesting that AMCO and the Estate were obligated to follow the guidelines issued by the National Fire Protection Agency (“NFPA”) or that their asserted failure to do so constitutes an “. . . egregious case[] of intentional spoliation.” (*Id.*, at 1223.)

Additionally, the evidence that, in March 2018, an employee of a property manager for Bank of America entered the Estate’s property on two occasions and removed wood, scrap metal and debris (Declaration of Scott Velasco, filed herein May 25, 2018, paras.30-31; Declaration of Michelle Scott (“Scott”), filed herein June 8, 2018 (“Scott Decl.”), paras.31-39) establishes that a third party, not AMCO or the Estate, caused the removal of evidence, such that “. . . the origin and cause of the fire cannot be determined with absolute certainty.” (Declaration John Miller (“Miller”), filed herein May 25, 2018, para. 24.)

Even if Pleau had met their initial burden, the Estate has produced evidence establishing that neither AMCO nor Felber authorized the entry by any person to clean up the site. (Declarations of Chet Cook, Carol Drouet, Carmen Williams and Carlos Arboleda in Support of Opposition to Motion for Terminating Sanctions, all filed June 25, 2018, at paras. 6-9; Declaration of Felber in Support of Opposition to Motion for Terminating Sanctions, filed June 25, 2018 (“Felber Decl.”), paras. 11-12.)

There is also evidence that Felber asked Scott, a neighbor, to advise her if anyone other than the “insurance agent” entered the property (Scott Decl., para. 29), which Scott did on March 20, 2018, ultimately prompting Felber to call the Plumas County Sheriff’s Department. (Felber Decl., para. 8.) There is also evidence which suggests that the two responding fire departments were unable to determine the origin or cause of the fire well before any of the events which Pleau contend resulted in the spoliation of evidence. (Declaration of Connolly in Support of Opposition to Motion for Terminating Sanctions, filed June 25, 2018, para. 10, Exhibit H, p.4.)

Accordingly, the motion to impose terminating, evidentiary or issue sanctions is denied, without prejudice.

### **Monetary**

By serving the agent for service of process of the Estate’s insurance company, rather than the Estate’s counsel, Pleau used discovery methods “. . . in a manner that does not comply with [their] specified procedures.” (*Code of Civil Procedure section 2023.010(b)*). Neither Pleau nor their counsel provide any justification for this misuse, or for pursuing their motions after receiving the Estate’s responses. (*See, California Shellfish v. United Shellfish Company* (1997) 56 Cal.App.4th 16, 25 (losing party has burden to establish substantial justification).)

Connolly has spent 10 hours in preparing the Estate’s oppositions to Pleau’s motions to compel and for a protective order, and anticipates spending an additional 1.5 hours to review the reply, at an hourly rate of \$165.00. (Connolly Decl., para. 19; Connolly PO Decl., para. 26). ) Accordingly, the Estate shall recover a total of \$1,897.50 as sanctions against Pleau and their attorney (*Code of Civil Procedure sections 2019.030( c ), 2030.290( c ).*)

### **Request for Judicial Notice**

The Court takes judicial notice of the existence of the records on file with this, and other, courts, but not of the hearsay statements therein. (*See, Day v. Sharp* (1975) 50 Cal.App.3d 904, 914

(improper to take notice of hearsay in appendix to accounting in probate matter); *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882 (probation reports).) There is insufficient information provided for the Court take judicial notice of the NFPA 921 Excerpts.

## **Family Law – 10:00 a.m.**

### **Case No. FL18-00119 – Mar. of Rice**

Tentative Ruling: **No appearance required.** Petitioner requested to make monthly payments on the \$435 filing fee. The Court orders Petitioner to pay \$100 per month to the Court Clerk beginning on August 1, 2018, and the first of each month thereafter until it is paid in full.

## **Family Law – 10:30 a.m.**

### **Case No. FL17-00083 – Mar. of Cokor**

Tentative Ruling: **Appearance required.** The Court will be discussing a time estimate and new date for the hearing now set for July 17, 2018. Counsel can appear telephonically by CourtCall. Further, the Minute Order entered for the May 23, 2018, was entered by Commissioner Hamlin and Counsel's request for an amendment of that Order will be forwarded to Commissioner Hamlin for her consideration of the request.

### **Case No. FL16-00174 – Cuccia vs. Gomez**

Tentative Ruling: **Appearance required.** The Court will discuss the results of mediation.

### **Case No. FL16-00149 – Gross vs. Luippold**

Tentative Ruling: **Appearance required.** The Court notes that no order for the Court's 6/20/18 ruling granting the Petitioner's Motion has been filed.

### **Case No. FL16-00140 – Gross vs. Luippold**

Tentative Ruling: **Appearance required.** The Court will discuss the status of service of the Order to Show Cause.

### **Case No. FL16-00230 – Marcigliano vs. Mierlot**

Tentative Ruling: **No appearance required.** Based on the stipulation of the parties, this matter is continued to July 23, 2018, at 10:30 p.m.

### **Case No. FL14-00118 – Moore vs. Woods**

Tentative Ruling: **Appearance required.** Since the entry of temporary orders on June 25, 2018, the Court became aware that he had previously represented the Petitioner in separate matters as recently as a year ago. Accordingly, the Court must disqualify and recuse himself from hearing this case and continue this matter to be heard by another judge. The temporary orders entered on June 25, 2018, shall remain in effect to the next hearing date.(CCP sec. 170.3)

### **Case No. F15-00105 – Pluff vs. Beam**

Tentative Ruling: **Appearance required.** Due to calendaring conflicts the July 19<sup>th</sup> hearing has been vacated and the Court will discuss a new date and time estimate for the review hearing.

### **Case No. FL09-00183 – Schildman vs. Davidson**

Tentative Ruling: **Appearance required.** The Court will be discussing the results of mediation.

**Case No. F18-00094 – Whalen vs. Paul**

Tentative Ruling: **Appearance required.** The Court notes there has been no responsive papers filed to date. The Court will be discussing a date and time estimate for setting the nullity hearing. Counsel can appear telephonically by CourtCall.

## **CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS**

### **Case No. FS09-00084 – County vs. Hopkins**

Tentative Ruling: **Appearance required.** Due to calendaring conflicts the July 19<sup>th</sup> hearing has been vacated and the Court will discuss a new date and time estimate for the contested hearing. The parties may appear telephonically via CourtCall.

### **Case No. CV16-000146 – Turenne vs. Miller**

Tentative Ruling: **Appearance required.** The Court will discuss the status of the appraisal and scheduling mediation.

### **Case No. LC17-00078 – Allstate Insurance Co. vs. Slusher**

Tentative Ruling: **No appearance required.** The parties settled the case and the dismissal has been filed. The CMC is off calendar.

### **Case No. CV17-00086 – Azevedo vs. A-1 Glass, et al.**

Tentative Ruling: **Appearance required.** The Court will discuss scheduling mediation as set forth in the Case Management Statements.

### **Case No. LC17-00085 – Graham vs. Plumas District Hospital**

Tentative Ruling: **Appearance required.** The Court notes the Dismissal of the case has not been filed to date. If the case has been dismissed by the hearing date, the CMC is taken off-calendar. Otherwise, counsel can appear telephonically by CourtCall.