

## TENTATIVE RULINGS

**FOR: January 26, 2018**

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

**Unlawful Detainer Cases** – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

**Court Reporting Services** – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

### CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

**Thomas Eugene Fronek, et al. v. FCA US LLC, et al.**

**16CV000786**

MOTION TO COMPEL DEPOSITION ATTENDANCE AND PRODUCTION OF DOCUMENTS

#### **TENTATIVE RULING:**

Plaintiffs Thomas Eugene Fronek and Karen Diane Fronek's motion to compel deposition attendance and production of documents by FCA US LLC's dealership personnel is **GRANTED IN PART**. Plaintiffs have shown good cause for the production of documents. Defendants shall produce the deponents for depositions and produce documents, without objections, within 10 calendar days of service of notice of entry of order. Defendant does preserve its objections based on the attorney-client privilege and work product doctrine. The parties shall meet-and-confer as to the date and time of the depositions, with consideration given to the convenience of the technicians and other personnel at the dealership.

The depositions shall take place at the dealership. This discovery dispute about the location of the depositions should have been quickly and easily resolved during the meet-and-confer process. The Court agrees with defendant's opening premise that plaintiffs chose to create a rather expensive discovery dispute over the location of a set of dealership depositions. (Opp. at p. 2: 4-5.) Requiring the depositions to go forward anywhere other than the dealership creates an unnecessary burden and expense to the deponents. The Court is deeply concerned that plaintiffs have continued to insist, without adequate explanation, on removing service personnel from their jobs that would put a strain on them and their families for a series of short depositions. As defendant put it best during the meet-and-confer process: "Requiring technicians to get in a car and drive to a nearby location is convenient for no one. It adds to the time the dealership

personnel are away from their jobs; time for which they are not compensated. It adds to the length of the depositions overall because there is a delay between the completion of one deposition and the commencement of the next deposition. It adds expense to the litigation because your office must pay for an off-site location. A cost we are certain would be added to any cost bill should the case proceed to trial. (Fisher Decl., Ex. B.)

Plaintiff's request for monetary sanctions is DENIED. An award of sanctions would be unjust for the reasons noted.

The parties shall appear to discuss the possible need to continue the trial date in light of this ruling.

**PROBATE CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)**

**Estate of Alyson W. Hill**

**17PR000055**

FIRST AND FINAL ACCOUNT AND REPORT OF ADMINISTRATOR AND PETITION FOR ITS SETTLEMENT; FOR ALLOWANCE OF COMPENSATION TO ADMINISTRATOR AND HER ATTORNEY FOR STATUTORY AND EXTRAORDINARY SERVICES; FOR REIMBURSEMENT OF ADVANCES; FOR APPROVAL OF PAYMENT OF FAMILY ALLOWANCE TO SURVIVING SPOUSE; FOR OFFSET OF BENEFICIARY'S DEBT TO ESTATE; AND FOR FINAL DISTRIBUTION

**TENTATIVE RULING:** GRANT Petition.

.....

**Estate of Elizabeth A. Van Winden**

**17PR000258**

SPOUSEAL PROPERTY PETITION

**TENTATIVE RULING:** GRANT petition. The declaration filed on January 22, 2018, contains allegations necessary to establish the community property claim.

**CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)**

**Carlo Juan Gabriel Teruel v. American Canyon Fire Protection District, et al.**

**17CV000119**

MOTION TO COMPEL ANSWERS TO DEPOSITION QUESTIONS

**TENTATIVE RULING:**

Plaintiff Carlo Juan Gabriel Teruel's motion to compel answers to deposition questions is GRANTED IN PART. (Code Civ. Proc., § 2025.480, subd. (a).) On November 7, 2017, Teruel deposed Chaplain Lee Shaw. Shaw refused to answer numerous questions claiming the clergy-penitent privilege. "Penitential communications" between clergy and penitent are privileged and not subject to disclosure. (Evid. Code, § 1032.) For question numbers 1-12, Shaw shall answer questions going to the existence of the privilege. These are foundational questions. The questions seek to ascertain whether the communication satisfies the requirements of the privilege. (See *id.* [a privileged "penitential communication" is a communication made in confidence].) With regard to question numbers 13-19, the presence of third parties precludes the assertion of privilege. (See *id.* [a privileged "penitential communication" is a communication made in the presence of no third persons].) As to question numbers 20-21, Teruel waived the privilege. (Evid. Code, § 912, subd. (a).)

Regarding question numbers 22-40, the privilege could apply or it could not depending on the circumstances. "It is not every statement made by any person to a minister that is privileged. Evidence Code section 1032 specifically defines those "penitential communications" which are privileged." (*People v. Johnson* (1969) 270 Cal.App.2d 204, 207.) A privileged "penitential communication" is a communication made in confidence, in the presence of no third persons, to a clergy member who, incident to the tenets of his religious denomination, is authorized to hear or accustomed to hearing such communications and has a duty to keep them secret. (Evid. Code, § 1032.) If Shaw satisfies these elements, then the privilege applies and no answer is required. If he does not, then he shall provide a response. For example, if material was disclosed to a third person, then the privilege would not apply. Although not a finding on the issue, based on the record, it does appear Shaw's application of the privilege may be too broad. Teruel is permitted to ask questions about whether the asserted privilege actually is a penitential communication.

Shaw shall appear for a deposition and provide answers to question numbers 1-21, and if appropriate, question numbers 22-40 within 30 calendar days. The parties shall meet-and-confer regarding an appropriate time and place for the deposition.

.....  
**Morton Friedkin v. Paul Ryan Associates, et al.**

**26-66551**

**MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT**

**TENTATIVE RULING:** Defendant/cross-defendant Simpson Sheet Metal, Inc.'s motion for determination of good faith settlement under Code of Civil Procedure section 877.6, subdivision (a)(1), is GRANTED. (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499; Kolthoff Decl., ¶¶ 3-5; Collaco Decl., ¶¶ 4-14.)