

TENTATIVE RULINGS

FOR: May 7, 2019

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. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. 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.

PROBATE CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Conservatorship of Richard Wilczak

17PR000240

[1] PETITION FOR TERMINATION OF CONSERVATORSHIP

APPEARANCE REQUIRED

[2] FIRST ACCOUNTING AND REPORT OF CONSERVATOR

APPEARANCE REQUIRED

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Estate of Sophie Hintze

18PR000160

FIRST AND FINAL ACCOUNT AND REPORT OF ADMINISTRATOR AND PETITION FOR SETTLEMENT, FOR ALLOWANCE OF COMPENSATION TO ATTORNEYS FOR ORDINARY SERVICES AND FOR FINAL DISTRIBUTION

TENTATIVE RULING: Judge Wood discloses that Cathy Zeller is a neighbor. Judge Wood still is able to be fair and impartial in this matter. GRANT petition, including fees as prayed.

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At 9:00 a.m.

Conservatorship of Tyler Funes

19MH000039

PETITION FOR APPOINTMENT OF LPS CONSERVATOR

APPEARANCE REQUIRED

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Mark Poe v. Curtis R Correll, et al.

18CV001356

MOTION FOR CLASS CERTIFICATION

TENTATIVE RULING: There is no proof of service in the court file. If a proper proof of service is file before or at the hearing, the motion for class certification will be granted for the reasons detailed in the papers. Otherwise, the motion will be denied without prejudice.

PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Conservatorship of Shirley Harris

17PR000141

ACCOUNT AND REPORT OF CONSERVATOR AND PETITION FOR ITS SETTLEMENT AND FOR FEES

TENTATIVE RULING: Hearing on the matter is continued to June 6, 2019, at 8:30 a.m. in Dept. B to allow Conservator to address the issues identified below.

The Court notes the significant issues raised in the Report of the Court-Appointed Counsel for Conservatee, at section 7, pp. 3-5. Conservator is to provide an explanation as to why the Pre-Move Notice of Proposed Change of Residence and Notice of Opening or Changing Guardianship or Conservatorship Account were neither filed, nor apparently served on Conservatee's counsel. This is particularly troubling in light of the fact that Conservator previously failed to provide Conservatee's counsel with proper notice of the original March 29, 2019, hearing on the present Accounting and Review, failed, initially, to file supporting documentation for the sale of real property pursuant to Probate Code section 2620, and, as discussed below, fails to adequately account for the proceeds of the sale of Conservatee's property.

The Court finds the Accounting on file is deficient for the reasons set forth in section 7 of the Report of Conservatee's Counsel. The deficiencies cited are significant enough to warrant denial of the petition. However, the Court elects to provide Conservator with the opportunity to prepare a new accounting for the conservatorship estate, together with a full accounting for the

administration of the Harris Family Trust dated 3-17-98 (identified as Seller of the real property in the Fidelity National Title Company Closing Documents for 2387 Eva Street, filed in this matter on March 25, 2019). Such accountings shall be filed and served on all interested parties not later than May 30, 2019. Failure to do so will result in denial of the petition. Counsel is directed to carefully ensure that the accountings are meticulously prepared in conformance with all relevant provisions of California Code.

Finally, the Court notes that no Investigator's Report has been filed. The Court Clerk is directed to send Notice to the Court Investigator.

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In the Matter of Turkington Bypass Trust

26-61271

SEVENTH ACCOUNT AND REPORT OF TRUSTEES AND PETITION FOR ITS SETTLEMENT AND FOR FEES

TENTATIVE RULING: The Petition is GRANTED, including fees as prayed.

CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Valli Construction, Inc., v. William Kastner, et al.

17CV000491

MOTION FOR LEAVE TO FILE CROSS-COMPLAINT

TENTATIVE RULING: The motion for leave to file cross-complaint by Plaintiff and Cross-Defendant Valli Construction, Inc. (Valli) is GRANTED. Valli is ordered to file the proposed cross-complaint within five days of entry of order.

A cross-defendant may cross-complain against a third person not yet a party to the action if the proposed cause of action asserted “(1) arises out of the same transaction, occurrence, or series of transactions or occurrences . . . or asserts a claim, right, or interest in the property or controversy which is the subject of the cause of action brought against [cross-defendant].” (Code Civ. Proc. §428.10, subs. (b).) After the first trial date in the matter is set, a party must obtain leave of court to file a cross-complaint against a third party. (*Id.* at § 428.50.) “Leave may be granted in the interest of justice at any time during the course of the action.” (*Ibid.*)

The Court finds that the cross-complaint Valli proposes to file asserts causes of action arising out of the same transaction as the cross-complaint filed against Valli. For the foregoing reasons, Valli's motion is GRANTED. Valli is ordered to file the proposed cross-complaint attached as Exhibit A to the Declaration of Mark T. Collinworth, within five days of entry of order.

The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Plaintiff's counsel is directed to contact Defendant's counsel

forthwith and advise Defendant's counsel of Local Rule 2.9 and the Court's tentative ruling procedure. If Plaintiff's counsel is unable to contact Defendant's counsel prior to the hearing, Plaintiff's counsel shall be available at the hearing, in person or by telephone, in the event Defendant's counsel appears without following the procedures set forth in Local Rule 2.9.

CIVIL LAW & MOTION CALENDAR – Hon. Cynthia P. Smith, Dept. C (Historic Courthouse) at 8:30 a.m.

Soda Canyon Group v. County of Napa, et al.

17CV001063

MOTION TO AUGMENT THE ADMINISTRATIVE RECORD

APPEARANCE REQUIRED