

TENTATIVE RULINGS

FOR: October 2, 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. 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. Cynthia Smith, Dept. F (Criminal Courts Bldg.- 1111 Third St.) at 1:30 p.m.

Guardianship of Giavonna River Grace Jordan, et al.

17PR000102

ACCOUNT AND REPORT OF GUARDIANS AND PETITION FOR ALLOWANCE OF ATTORNEY'S FEES

TENTATIVE RULING: GRANT petition, including fees as prayed. The guardians, Robert Jordan and Nancy Jordan, are ordered to immediately place the estate assets into interest-bearing accounts. The assets should have been placed in interest-bearing accounts from the outset of the guardianship. Attorney Samuel Joens is instructed to comply with California Rules of Court, rules 7.702 and 7.751 for future accountings seeking attorney's fees. The matter is set for an accounting hearing in two years, on October 2, 2020, at 1:30 p.m. in Dept. F. All accounting documents must be filed at least 30 days prior to the hearing. The clerk is directed to send notice to the parties.

PROBATE CALENDAR – Hon. George V. Spanos, Dept. C (Historic Courthouse) at 2:00 p.m.

Conservatorship of Miguel Angel Lopez

16PR000205

REVIEW HEARING

TENTATIVE RULING: Although not stated in the April 5, 2017 Minute Order, due to the representations made in the original petition, accountings are waived as long as the requirements of Probate Code section 2628 are satisfied. Based on the report of the court investigator, the Court determines by clear and convincing evidence that the conservatee can

communicate a desire to participate in the voting process, and therefore orders conservatee's right to register to vote shall be restored, pursuant to Elections Code section 2209, subdivision (b). After a review of the matter, the Court finds the co-conservators are acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on October 2, 2020, at 8:30 a.m. in Dept. I. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

.....
Conservatorship of Michael John McCormick

18PR000092

REVIEW HEARING

TENTATIVE RULING: The Hearing on this matter is continued to October 4, 2018 at 2:00 p.m. in Dept. C to be heard as the same time as the Petition to Transfer Conservatorship Proceedings.

.....
Conservatorship of Raymond Michael Hayes

26-61509

REVIEW HEARING

TENTATIVE RULING: The Court has twice continued this matter to allow co-conservators Randolph Hayes and Jacqueline Chikoyak to file Notice of Conservatee's Rights (Judicial Council form GC-341), Determination of Conservatee's Appropriate Level of Care (Judicial Council form GC-355), and Request to Waive Court Fees (Judicial Council form FW-001-GC) and Order on Court Fee Waiver (Judicial Council Form FW-003-GC) if seeking to waive court investigator fees. The appropriate documents, however, have not been filed. The matter is continued to December 7, 2018, at 2:00 p.m. in Dept. I to allow the co-conservators time to file the materials. If the materials are not filed before the next hearing date, the Court may consider removing the co-conservators from their position. The clerk is directed to send notice.

.....
Estate of Charles B. Huggins

26-66902

PETITION FOR FINAL DISTRIBUTION OF THE ESTATE WITH A WAIVER OF AN ACCOUNTING BY ALL BENEFICIARIES PLUS AS ACCOUNTING FOR THE COURT; PAYMENT OF PERSONAL REPRESENTATIVES AND ATTORNEY'S COMPENSATION AND ALL COSTS

PETITION FOR PAYMENT OF PERSONAL REPRESENTATIVES & ATTORNEYS EXTRAORDINARY COMPENSATION

TENTATIVE RULING: The Petition is GRANTED, except statutory fees must be based upon the value of the estate accounted for. (See Prob. Code §§ 10800(b), 10810(b).) However, the court does find that additional compensation for extraordinary services is

warranted. Therefore, the court will award: 1) personal representative's statutory fees in the amount of \$3,000 and extraordinary fees in the amount of \$10,000, and 2) attorney's statutory fees in the amount of \$3,000 and extraordinary fees in the amount of \$10,500.

CIVIL LAW & MOTION CALENDAR – Hon. George V. Spanos, Dept. C (Historic Courthouse) at 2:00 p.m.

Wignall v. Calistoga Unified School District

16CV000907

DEFENDANT CALISTOGA UNIFIED SCHOOL DISTRICT'S MOTION FOR JUDGMENT ON THE PLEADINGS

TENTATIVE RULING:

Defendant Calistoga Unified School District's ("defendant") motion for judgment on the pleadings is GRANTED.

Preliminarily, defendant requests judicial notice of plaintiff Charleen Wignall's Tort Claim, filed on February 29, 2016. The court GRANTS defendant's request.

Code of Civil Procedure § 438 governs motions for judgment on the pleadings, stating in relevant part that, when the moving party is a defendant, the motion may be granted where "[t]he court has no jurisdiction of the subject of the cause of action alleged in the complaint [or] [t]he complaint does not state facts sufficient to constitute a cause of action against that defendant." (Code Civ. Proc., § 438(c)(1)(B).) The standard for granting a motion for judgment on the pleadings is essentially the same as that applicable to a general demurrer, that is, under the state of the pleadings, together with matters that may be judicially noticed, it appears that a party is entitled to judgment as a matter of law." (*Schabarum v. Cal. Legislature* (1998) 60 Cal.App.4th 1205, 1216 (citations omitted).)

Defendant contends judgment in its favor is warranted, as plaintiff has failed to comply with the Tort Claims Act (Gov. Code, 810 et seq.) and has thus failed to allege facts sufficient to constitute a cause of action.

Per the Tort Claims Act, the presentation of a claim to a public entity is a prerequisite to maintaining a lawsuit against the entity or its employees. (Gov. Code, § 945.4.) Here, plaintiff Francesca Wignall alleges she filed a timely claim on February 29, 2016, pertaining to damage discovered in "September 2015", which was rejected by defendant. As conceded by plaintiff, the claim at issue was filed by non-party Charleen Wignall, who is plaintiff's daughter and named in the caption as plaintiff's "attorney in fact." Plaintiff presents no evidence that she filed a claim with defendant, admittedly relying on the claim of her daughter.

Generally, claims for damages must be presented within 6 months after the cause of action accrues. (Gov. Code § 911.2(a).) The law permits late claims upon application; however,

an application to file a late claim must be made within one year after accrual of the claim. (Gov. Code, § 911.4.) Through the objection of Charleen Wignall, filed in opposition to the motion, plaintiff asserts mental incapacity prevented timely compliance with the claim requirements. While the time limitations are tolled when, for instance, a claimant is mentally incapacitated, a one-year limitation still applies.

Where a claimant can establish incapacity to comply with the claim presentation requirements of the Tort Claim Act, courts are required to relieve a plaintiff from the timely claim requirements if he or she applies for the relief within a reasonable time not to exceed one year of accrual of the claim and if his failure to file timely claim was result of incapacity. (Gov. Code, § 911.4(c); and *Baber v. Napa State Hospital* (1984) 154 Cal.App.3d 514.) Cases such as *Baber* afford trial courts with a great deal of discretion in determining what constitutes a “reasonable time.” Unless a plaintiff applies for relief from the claims presentation time limitations within one year of accrual of the injury, however, the court is without jurisdiction to grant relief.

Here, plaintiff alleges she discovered the water damage during “September 2015.” Under § 911.4, plaintiff was required to seek relief by the end of September 2016. While plaintiff’s daughter filed a timely claim, as defendant points out, long-standing case authority does not permit the parties to rely on the timely claim of an unnamed party.

Based on the foregoing, the Court is without authority to grant plaintiff time within which to file a late claim. Unless Francesca can produce evidence that she filed a timely claim with defendant under the Tort Claims Act, the court will grant defendant’s motion based on plaintiff’s failure to allege facts sufficient to state a cause of action.

Leave to amend is requested to permit Charleen Wignall to be named as a plaintiff based on the contention that both plaintiff and Charleen have been harmed. While case authority and public policy in California allow liberal amendment in order to permit an action to be tried on the merits, judicially noticeable evidence demonstrates Charleen’s claims fail. Charleen filed her claim on February 29, 2016, yet failed to file suit within the requisite six months following rejection of her claim. (Gov. Code § 945.6.)

Based on the foregoing, the motion for judgment on the pleadings is GRANTED.

.....
In the Matter of Eirc Samuel Pearson

18CV001053

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.