

TENTATIVE RULINGS

FOR: December 27, 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.

NOTE: ALL CALENDARS WILL BE HELD IN DEPT. E

PROBATE CALENDAR – Hon. Diane Price, Dept. E (Criminal Courthouse) at 2:00 p.m.

Conservatorship of Jose Bravo Contreras

18MH000112

PETITION FOR APPOINTMENT OF LPS CONSERVATOR

APPEARANCE REQUIRED

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Estate of Jonathan Roy Spencer

18PR000254

PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY
AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT
ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: The names of the witnesses on the holographic will are not legible, and one of the dates at the top of the instrument is crossed-out. Petitioner shall: (1) file an addendum listing the witnesses' names and addresses; (2) file Proof of Holographic Instrument (Judicial Council form DE-135) from each witness; (3) explain why the holographic will contains a crossed-out date (decedent's error, etc.) and whether a prior will existed and was revoked; (4) explain petitioner's relation to decedent; and (5) file an amendment to correct item 8 in the petition because not all beneficiaries and executors are listed (e.g., Helen Gilbert). The matter is continued to January 29, 2019, at 8:30 a.m. in Dept. A to allow petitioner to file these materials.

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. E (Criminal Courthouse) at 2:00 p.m.

Thomas Pierce v. Royal Pacific Limousine, et al.

17CV000675

MOTION FOR PROTECTIVE ORDER RE EXPERTS AND REQUEST FOR SANCTIONS

TENTATIVE RULING: Plaintiff Thomas Pierce’s motion for a protective order under Code of Civil Procedure section 2034.250, subdivision (a), regarding defendants Earl Eugene King and Royal Pacific Limousine’s expert witness election that restricts them from retaining multiple retained experts in the same specialty is DENIED.¹ Pierce maintains that in defendants’ initial expert witness disclosure list, defendants elected neurosurgeon, Dr. McCormick, and then in their supplemental expert witness disclosure list, defendants added neurologist, Dr. McIntire. Based on the expert witness disclosure statements, both will testify to the same things. According to Pierce, defendants have “doubled up” by obtaining these two “neurologic experts” to testify on the same subject matter. As a result, Pierce seeks a protective order requiring defendants to withdraw Dr. McIntire as a listed expert due to the expense of deposing both experts. Defendants argue their experts are not cumulative because they cover different factual areas and provide different opinions as to the same factual issues.

This matter should have been resolved during the meet-and-confer process. Defendants clarify that Dr. McIntire is a medical doctor with a specialty in neurology who will testify about Pierce’s medical condition while Dr. McCormick is a medical doctor with a specialty in neurosurgery who will testify about Pierce’s surgery. Because the experts are not duplicative, Pierce has not shown good cause to reduce the number of defendants’ expert witnesses. (*Id.*, § 2034.250, subd. (b).)

Pierce’s request for monetary sanctions against defendants and their attorney for failing to agree to withdraw their expert witness listed in defendants’ supplemental expert witness list is DENIED. The request is not code-compliant. Pierce did not cite in the notice of motion the particular code section authorizing sanctions. (Code Civ. Proc., §§ 2023.030-2023.040; see Weil & Brown, Cal. Practice Guide: Civil Proc. Before Trial (Rutter Group 2018) at § 8:2000 [“The notice of motion must contain a request for sanctions and must: . . . Cite the *authority* for such sanctions.”].) Citing to a provision in the memorandum of points and authorities is a violation of due process.

Defendants’ request for monetary sanctions against Pierce for opposing the motion is DENIED. The imposition of monetary sanctions would be unjust under the circumstances. (Code Civ. Proc., § 2034.250, subd. (d).)

The parties shall meaningfully meet-and-confer prior to the filing of any future discovery motions. Failure to adequately meet-and-confer may result in monetary sanctions.

¹ Pierce also moves under Code of Civil Procedure section 2034.280 and Evidence Code section 723. Neither provision authorizes Pierce to bring a motion for a protective order.

APPLICATION FOR DETERMINATION OF ATTORNEY'S FEES

TENTATIVE RULING: Plaintiff Top it Off Bottling, LLC's application for determination of attorney's fees is DENIED in part. Plaintiff has not shown the attorney's fees it seeks are "extraordinary." (See Local Rules for the Superior Court of the State of California, County of Napa, rule 6.10(A).) For example, spending 4 hours, at a cost of \$1,500, researching the proper method to obtain a default judgment and preparing the default judgment paperwork and pleadings is not "extraordinary." Plaintiff brought the case against defendant and should have anticipated that default proceedings may result on a claim of only \$9,485.67 plus interest and fees. Nor does the Court award for anticipated fees, especially on an application seeking additional attorney's fees. Moreover, the accompanying declaration states defendant's "general counsel refused to accept service or provide me with updated contact information." (Gallagher Decl., ¶ 11.) Plaintiff attempts to use this purported refusal as a reason why it incurred additional fees. The declaration is misleading. The supporting evidence actually provides that the attorney had not been retained in this matter and therefore could not accept service or provide any information. (*Id.*, Ex. F.)

The Court will allow attorney's fees in accordance with the default schedule in rule 6.10(A) in the amount of \$1,976.69.