

# **Tentative Rulings**

## **Law & Motion and Family Law Calendar for February 9, 2015**

February 5, 2015, 4:00p.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, February 5, 2015 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 do 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. PR14-00058– Estate of Hughes**

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. The Petition to Administer the Estate is granted. Petitioner is to prepare the Order.

#### **Case No. PR15-00001 – Estate of Stoy**

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. The Spousal Property Petition is granted. Petitioner is to prepare the Order.

#### **Case No. PR14-00055 – Guardianship of Marquez**

Tentative Ruling: **Appearance required.**

### **Civil – 9:30 a.m.**

#### **Case No. CV13-00149 – Seneca Gold vs. Preim**

Tentative Ruling: **Overruled, in part.** The general demurrers of Seneca Gold, LLC (“Seneca”) to the first through fourth causes of action in the Cross-Complaint (“XC”) filed by Dane J. and Jon N. Shields (collectively “Shields”) are overruled as to the first cause of action, and sustained as to the second, third and fourth causes of action, with leave to amend the second and third. Seneca’s request for judicial notice is granted as to the existence of the records in the Court’s files, but denied as to any facts or hearsay contained therein.

The two-year statute of limitations governs the first cause of action, for interference with contract. (*Murphy v. Hartford Accident and Indemnity Company* (1960) 177 Cal.App.2d 539, 543-544.) It bars Shields’ affirmative claim, however, only if the limitations period had run

before Seneca filed its Complaint on September 24, 2013. (*City of Oakland v. Hassey* (2008) 163 Cal.App.3d 4<sup>th</sup> 1477, 1495-1496.) None of the conduct upon which this cause is based occurred more than two years before that date.

The elements of a cause of action for trespass are a plaintiff's lawful possession of described property, the defendant's wrongful act of trespass and damage caused by the trespass. (5 *Witkin, California Procedure* (5<sup>th</sup> Ed. 2008), *Pleading*, sections 631-632.) It is alleged that Shields had the right to mine the property (XC, paras. 4, 5 and 10); however, it is not alleged that Shields had the right to possession of the property. Nor it is alleged that Seneca physically invaded the property. (5 *Witkin, Summary of California Law* (10<sup>th</sup> Ed. 2005), *Tort*, section 693.)

The elements of a cause of action for quiet title are (a) a description of the property that is the subject of the action; (2) the title of the plaintiff as to which a determination is sought; (3) the claims adverse to plaintiff's title; and (4) the date as of which title is sought. (*Code of Civil Procedure* section 761.020; 5 *Witkin, California Procedure*, *supra*, section 663.) The allegations "...must be express and not left to inference...." (*Peck v. Martinez* (1941) 46 Cal.App.2d 855, 856.)

The demurrer to the fourth cause of action is sustained without leave, because there is no separate cause of action for injunctive relief. (*McDowell v. Watson* (1997) 59 Cal.App.4<sup>th</sup> 1155, 1159.)

**Family Law – 10:30 a.m.**

**Case No. FL04-25109 – Mar. of Alexander**

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

**Case No. FL11-00193 – Barreno vs. Wingfield**

Tentative Ruling: **No appearance required.** The court has reviewed and signed a custody and visitation agreement.

**Case No. FS14-00255 – County of Plumas vs. Hoffman**

Tentative Ruling: **Appearance required.**

**Case No. FL15-00007 – Mar. of Johnson**

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

**Case No. FL14-00219 – Mar. of Miranda**

Tentative Ruling: **No appearance required.** The court has reviewed and signed a custody and visitation agreement.

**Case No. FL08-28432 – Pace vs. Stringfellow**

Tentative Ruling: **No appearance required.** The court continues petitioner's request for order until April 13, 2015, at 10:30a.m., to consider the outcome of respondent's trial in March.

**Case No. FL04-24640 – Mar. of Quinn**

Tentative Ruling: **No appearance required.** The court continues the request for attorney fees to February 23, 2015, at 10:30a.m., in order to prepare a tentative ruling prior to the hearing.

**Case No. FL14-00144 – Whitney-Lemm vs. Lemm**

Tentative Ruling: **Appearance required.** The court notes there is no proof of service in the file on the petitioner.

## **CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS**

### **Case No. LC14-00147 – CMRE Financial Services vs. Hanson**

Tentative Ruling: **Appearance required.** The court notes there is no proof of service on the defendant. In addition, plaintiff has failed to file a case management conference statement. Should there be any further violations of Rule 3.725, this matter will be set for an order to show cause and sanctions may be imposed.

### **Case No. FL12-00284 – Mar. of Hoff**

Tentative Ruling: **No appearance required.** The court has not received notice of settlement. Therefore, the court confirms the trial set for April 2, 2015, at 9:00a.m.

### **Case No. CV14-00149 – McLaughlin vs. Morgan Chase Bank**

Tentative Ruling: **No appearance required.** The court has signed a stipulation and order continuing this case management conference.

### **Case No. CV14-00151 – Miles vs. Pizza Factory Restaurant**

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

### **Case No. PR09-00041 – Estate of Casteel**

Tentative Ruling: **Appearance required.**

### **Case No. FL10-00013 – Mar. of Mattingly**

Tentative Ruling: **Appearance required.**

### **Case No. CV13-00169 – Robinson vs. Genesis Systems**

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

### **Case No. CV13-00149 – Seneca Gold, LLC vs. Preim**

Tentative Ruling: **Appearance required.**

### **Case No. CV14-00089 – Smith vs. Emmot**

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.