

Tentative Rulings

Law & Motion and Family Law Calendar for July 28, 2014

July 24, 2014, 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, July 25, 2014, 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. PR14-00012 – Estate of Carroll

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioner Verta Murray's Petition by Personal Representative for Leave to Resign and Appointment of Remaining Personal Representative is granted.

Case No. PR14-00036 – Estate of Lundy

Tentative Ruling: **Granted, upon proof of publication.** If proof of publication is filed prior to the hearing, the court will find that notice has been given as required by law, and the court will grant the Petition for Probate.

Case No. PR13-00033 – Estate of Saari

Tentative Ruling: **Approved.** The court finds that notice has been given as required by law. Petitioner's First and Final Report of Personal Representative and Petition for Final Distribution on Account and for Payment of Compensation for Ordinary Services to Attorney for Personal Representative is approved. Petitioner is to prepare the Order.

Case No. PR14-00031 – Estate of Smith

Tentative Ruling: **Appearance required.** The court notes the following deficiencies in the Notice and Petition. The Notice does not request the decedent's will be admitted to probate or authority to administer the estate under the IAEA. The proof of service by mail does not list the date or place of mailing. The Petition requests publication, but does not specify the name of the newspaper, and publication is to be arranged, not requested. Petitioner is to file an amended Petition and Notice.

Case No. PR6189 – Guardianship of Wright

Tentative Ruling: **No appearance required.** The court has received the confidential guardianship status report, and finds that continued guardianship is in the best interests of the minor. The court schedules the annual review hearing for July 27, 2015, at 9:00a.m. The clerk of the court is reminded to send notice to the guardian one month prior to this date, informing the guardian of the duty to file a confidential status report prior to the review hearing.

Case No. PR11-00004 – Matter of Groulx

Tentative Ruling: **Appearance required.** The court has not received the investigator's report.

Case No. PR14-00027 and PR14-00028 – Guardianship of Tuell

Tentative Ruling: **Appearance required.** The court will review the investigator's report with the proposed guardians.

Civil – 9:30 a.m.

Case No. CV09-00065 – Adams vs. Dept. of Fish & Game

Tentative Ruling: **Granted.** Defendant's Motion for Leave to Amend Defendant's Answer to Plaintiffs' Fourth Amended Complaint is granted. Plaintiffs have failed to demonstrate they will suffer prejudice if the defendant is permitted to amend its answer to include additional affirmative defenses.

Case No. CV13-00032 – Klein vs. Wells Fargo Bank

Tentative Ruling: Defendant's Motion to Compel Discovery is **granted**. As it appears the plaintiff has now complied, or attempted to comply with discovery, the court will reduce the requested attorney fees to \$2160, payable by the plaintiff to the defendant. Defendant's Motion to Compel Deposition of Plaintiff is **granted**. The court finds the notice of taking deposition was properly served and scheduled within the provisions of CCP 2025.250. The court orders monetary sanctions in the amount of \$1440, payable by the plaintiff to the defendant. Defendant's Motion to Expunge Lis Pendens is **granted**. As the trustee's deed is recorded, the borrower (plaintiff here) is limited to monetary damages, pursuant to Civil Code section 2924.12(a)(1). As such, there is no real property claim, and plaintiff has not shown the probable validity of her real property claim by a preponderance of the evidence.

Case No. CV10-00225 – Quigley vs. Aptos/La Selva Fire Protection

Tentative Ruling: Plaintiff's Motion to Tax Costs is **granted in part, and denied in part**. The Court agrees with the plaintiff that costs must be apportioned among all defendants jointly represented, pursuant to *Fennessy v. DeLeuw-Cather Corp.* (1990) 218 Cal.App.3d 1192. The Court finds that defense counsel participated in depositions and performed other tasks that benefitted all of his six named clients (four individuals and two fire protection districts). With regard to the claimed fees, the Court orders the plaintiff to pay the following prejudgment costs:

- \$395 filing fee
- \$550 complex litigation fee
- \$166.67 filing fees for two summary judgment motions (1/6th of \$1000)
- \$20 fee for ex parte application for IME (1/6th of \$120)
- \$25 jury fees (1/6th of \$150)
- \$1760.34 deposition costs (1/6th of \$10,596.06)

Total: \$2,917.01

Case No. LC13-00198 – TD Bank USA vs. Kron

Tentative Ruling: **Denied.** Defendant's Motion to Vacate Default and Default Judgment is denied, as the defendant fails to allege any sufficient basis to set aside the judgment sufficient to satisfy CCP Section 473(b). The file contains a proof of service of the summons and complaint on the defendant by a registered process server on February 19, 2014.

Family Law – 10:30 a.m.

Case No. FL14-00122 – Burke vs. MacDonald

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

Case No. FL12-00232 – Butts vs. Kilby

Tentative Ruling: **Appearance required.**

Case No. FL04-24668 – Lancaster vs. Rowe

Tentative Ruling: **Appearance required.**

Case No. FL13-00997 – Lowery vs. Castillo

Tentative Ruling: **Appearance required.** The court has not received a request for publication.

Case No. FL02-23065 – Mar. of Newman

Tentative Ruling: **Appearance required.** The court will discuss transferring this case to Butte County with the parties.

Case No. FL14-00129 – Mar. of Rich

Tentative Ruling: **No appearance required.** At the request of the parties and the mediator, this matter is continued to August 11, 2014 at 10:30a.m., for the results of mediation.

Case No. FL09-00302 – Mar. of Runge

Tentative Ruling: **No appearance required.** The court has received and signed a stipulation and order.

Case No. FL12-00199 – Mar. of Welch

Tentative Ruling: **Appearance required.** The court will review the parenting plan recommendation with the parties.

Case No. FL08-28352 – Mar. of Wiseman

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

Case No. FL 14-00136 – Mar. of Wolf

Tentative Ruling: **Appearance required.**

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. CV13-00059 – Corey vs. Brown

Tentative Ruling: **Appearance required.** The court will discuss the status of the case with the parties.

Case No. LC14-00019 – Credit Acceptance Corp. vs. Kilpatrick

Tentative Ruling: **No appearance required.** The court notes this is a collections case. This matter is continued to January 12, 2015 at 1:30p.m., pursuant to Rule 3.740(f). If the plaintiff has not obtained a default judgment by said date, this matter will be set for an order to show cause and sanctions may be imposed.

Case No. CV14-00023 – Liberty Mutual Insurance vs. Bi-State Propane

Tentative Ruling: **No appearance required.** At the request of plaintiff's counsel, this matter is continued 90 days to October 27, 2014, at 1:30p.m.

Case No. LC14-00020 – Unifund CCR vs. Conley-Moser

Tentative Ruling: **Appearance required.**

Case No. LC14-00022 – Unifund CCR vs. Retallack

Tentative Ruling: **Appearance required.** 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. CV09-00065 – Adams vs. Dept. of Fish & Game

Tentative Ruling: **Appearance required.** If a party wishes to appear to oppose the court's tentative ruling on the 9:30 calendar, the court will hear the case management conference at that time.

Case No. CV09-00093 – Bauer vs. Almanor Manufacturing

Tentative Ruling: **Appearance required.**

Case No. PR13-00028 – Estate of McGushin

Tentative Ruling: **Appearance required.** The court will set a date to hear the petitions.

Case No. CV13-00032 – Klein vs. Wells Fargo Bank

Tentative Ruling: **Appearance required.** If a party wishes to appear to oppose the court's tentative ruling on the 9:30 calendar, the court will hear the case management conference at that time.

Case No. CV13-00116 – Peay vs. Whitecap Ready Mix

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