

Tentative Rulings

Law & Motion and Family Law Calendar for June 9, 2014

June 19, 2014, 4:00p.m.

Department Two

Due to the fact that Judge Hilde is on vacation this week there will be no tentative rulings posted for the June 23 calendar, other than the one noted below. Therefore, appearances are required on all other matters.

To request a hearing on the case listed below, you must call the Court at 530/283-6305 by 12:00 noon, June 20, 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.

Civil – 9:30 a.m.

Case No. CV 09-0065 -Adams, et al. v. State of California, et al.

Tentative Ruling: **Denied in full.** The motion to transfer this case for trial, made pursuant to *Code of Civil Procedure section 394(a)* by defendants, the California Department of Fish and Wildlife (“DFW”), and John McCamman, Ed Pert and Randy Kelly (collectively “Individual Defendants”), is denied.¹ The request for judicial notice by plaintiff, City of Portola (“Portola”), is granted.

Section 394(a) provides that, when a local governmental entity or agency is a party, the transfer of an action to a neutral county for trial is mandatory under three circumstances. (*See, County of San Bernardino v. Superior Court* (1994) 30 Cal.App.4th 378, 382-383 (“*San Bernardino*”) (“redacted version” of statute).) As such, it is a removal, not a venue, statute. (*Id.*, at p. 385.)

Under Clause One, removal is available when “. . . both sides are public entities . . .” (*Id.* at fn.10. (Italics in original.))² A Clause Two case, on the other hand, is one in which “. . . a plaintiff public agency sue[s] private defendants.” (*Id.*, at p. 385.) Hence, if they had not been dismissed (*see*, Stipulation and Order, entered June 6, 2014), the Individual Defendants would have been entitled to a transfer of Portola’s action under Clause Two. (*See, McCarthy v. Superior Court* (1987) 191 Cal.App.3d 1023, 1033-1034 (transfer proper where at least one

¹ All subsequent statutory references are to the *Code of Civil Procedure*.

² The Court adopts the statutory short-hand used in *San Bernardino, supra*.

defendant was a nonresident).) Having been dismissed, the Individual Defendants' motion is moot.³

Section 394(b) excludes the State and its agencies from the definition of a "local agency," rendering Clause One, which governs cases where both parties are public entities, unavailable to DFW. DFW, however, as a "resident" of Sacramento County, seeks a transfer under Clause Two.

Other than in *San Bernardino, supra*, where the court stated, without explaining, that *Westinghouse, supra*, was a Clause Two case, because it involved an action brought by a public entity against a *private* person, there appears to be no appellate opinion which has discussed, or ruled on, whether a State agency is ". . . a resident of another county, city and county, or city . . ." under Clause Two. As noted in *Westinghouse, supra*, however:

State agencies are likely excluded from the scope of section 394 for the practical reason that even where taxpayer prejudices exist in favor of state agencies, there are no "neutral" counties to which a suit may be transferred. *Id.*, fn.4.⁴

Given *section 394(b)*, and the practical difficulties of finding a "neutral county" where the State or its agency is involved, it would be inconsistent to construe Clause Two of *section 394(a)* so as to allow DFW to obtain relief that is expressly made unavailable to it under Clause One. Accordingly, DFW's motion is denied.

Defendant's Motion for Leave to Amend Answer to Plaintiffs' Fourth Amended Complaint is **granted**. The court notes no opposition was filed.

³ Even if they remained in the action, however, their residence, is irrelevant to DFW's motion. (*See, Westinghouse Electric Corporation v. Superior Court* (1976) 17 Cal.3d 259, 277-278 ("*Westinghouse*") (severance and separate transfer as to nonresidents available).)

⁴ Dicta in authorities cited by DFW, which involved venue, not removal, statutes, is inapposite. (*See, Harris v. Alcoholic Beverage and Control Board* (1961) 197 Cal.App.2d 759 (venue under *sections 401 and 395*); *The Regents of the University of California v. Superior Court* (1970) 3 Cal.3d 529 (venue under *section 395*).) On the other hand, both *San Bernardino* and *Westinghouse* considered *section 394* and, in dicta, suggest that State entities are not entitled to any relief under this removal statute.