

Tentative Rulings

Law & Motion and Family Law Calendar for March 28, 2016

March 24, 2016, 4:00 p.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, March 25th. 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. PR07-6382– Estate of Ross

Tentative Ruling: **Granted.** Petitioner's Waiver of Accounting and Petition for Final Distribution; for Compensation for Services by Attorney is granted. Petitioner is to prepare the Order.

Case No. PR15-00022 – Estate of Vincent

Tentative Ruling: **Granted.** The Motion for Order Vacating and Setting Aside Order is granted, pursuant to CCP 473(b). On January 25, 2016, the court heard petitioner's Petition to Determine Persons Entitled to Distribution of Estate; Request for Approval of Creditor's Claim; First and Final Account and Report of Executor and Petition for its Settlement; for Allowance of Compensation to Executor and Attorney for Ordinary and Extraordinary Services and for Final Distribution. Notice of the hearing and the Petition were mailed to the sole heir of the estate, Daniel Vincent on December 11, 2015. However, the notice indicated a hearing would be held on January 16, which was not a law and motion calendar date for the court. Therefore, another notice was mailed to Mr. Vincent on December 14, with a correct date of January 25 for the hearing. A Supplemental Petition for Settlement on Account and for Final Distribution was filed by the petitioner on January 20, 2016, adding an additional creditor's claim and a request for \$20,000 to be retained for closing expenses.

At the hearing on January 25, Mr. Vincent did not appear. As there was no objection, the court granted the petition and supplemental petition. However, Mr. Vincent apparently appeared at the courthouse approximately 30 minutes later, after court had concluded the probate calendar, as it was his intention to object to the petitions. Mr. Vincent subsequently retained counsel, who filed this motion. The motion indicates that Mr. Vincent objects to the creditor's claim of the executor, the accounting, and request for extraordinary attorney's fees. The motion also states that Mr. Vincent requests the "opportunity to address the supplemental petition".

Petitioner filed a Memorandum of Points and Authorities in Opposition to the Motion, requesting that the court deny the motion because it was not accompanied by a copy of the answer or other pleading, which is required by section 473(b). In addition, petitioner argues that the required showing of “mistake, inadvertence, surprise or excusable neglect” was not made. Basically, petitioner argues that Mr. Vincent should have left his home in Lake Almanor in plenty of time to be at the courthouse at the time of the hearing, and there was no reason for him to be late. Finally, petitioner argues that she will be prejudiced if the court grants the motion because she has already issued checks to herself, her attorney, and other creditors.

Mr. Vincent, through his attorney, then filed a Reply, which included a proposed Objection to the Petition for Final Distribution, Accounting and Report. The Objection also indicates that Mr. Vincent only objects to the creditor’s claim of the executor, the extraordinary fees to her attorney, and the lack of accounting for alleged personal items belonging to the estate.

Although it is correct that the original motion was not accompanied by a copy of the answer or other pleading, Mr. Vincent has remedied that issue and attached his proposed Objection to the Reply, filed on March 9. The court finds that this satisfies section 473(b). The court also notes that Mr. Vincent was not required to file a written objection or pleading in order to object to the Petition that was heard on January 25. The court also finds that a sufficient showing was made that Mr. Vincent attempted to appear at the court hearing on that date, but was at least half an hour late, constituting excusable neglect. The court will defer ruling on petitioner’s request for attorney’s fees.

The court will set the matter for a contested hearing. If there is no request to argue this ruling in person, the court will schedule a case management conference at 1:30p.m., and counsel may appear via CourtCall.

Case No. PR16-00003 – Guardianship of Bailey

Tentative Ruling: **Appearance required.** The court has not received the guardianship investigation report.

Case No. PR15-00046 – Guardianship of Castillo

Tentative Ruling: **Appearance required.** The court will set a contested hearing.

Case No. PR13-00004 – Guardianship of Miles

Tentative Ruling: **No appearance required.** The court has received and reviewed the guardianship status reports, and finds that continued guardianship is in the best interests of the minor. The matter is set for an annual review on March 27, 2017, at 9:00a.m. The clerk is reminded to send notice to the guardian one month prior to the review hearing, informing the guardian of the duty to file a confidential status report prior to the hearing.

Case No. PR16-00007 – Matter of Estes

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

Civil – 9:30 a.m.

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

Tentative Ruling: **Granted.** Plaintiff's Motion to Compel Discovery is granted. The court notes that defendants have not filed any objection. Monetary sanctions are awarded in the amount of \$1,900 against defendants and their counsel.

Family Law – 10:30 a.m.

Case No. FL16-00030 – Mar. of Brennan

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

Case No. FL02-22955 – Burns vs. Dean

Tentative Ruling: **Appearance required.** The court will discuss Ms. Schaffer's report with the parties.

Case No. FL12-00195 – Clift vs. Nelson

Tentative Ruling: **Appearance required.** If there is no appearance, the court will continue the orders filed on December 23, 2015.

Case No. FL13-00022 – County of Plumas vs. Taylor

Tentative Ruling: **Granted.** The motion to be relieved as counsel for respondent is granted. The court notes there is no opposition in the file from the respondent.

Case No. FL11-00038 – Mar. of Heater

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

Case No. FL14-00043 – Mar. of Patterson

Tentative Ruling: **Appearance required.**

Case No. FL13-00136 – Mar. of Tidwell

Tentative Ruling: **Appearance required.**

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. LC15-00111- Barnes vs. Hammond

Tentative Ruling: **Appearance required.**

Case No. FL02-22382 – Mar. Of Bresnyan

Tentative Ruling: **Appearance required.**

Case No. CV15-00109 – Lowry vs. Lake Almanor Country Club

Tentative Ruling: **No appearance required.** The court has received a notice of settlement. A case management conference is scheduled for May 23, 2016, at 1:30p.m. If a dismissal is filed prior to that date, the matter will be taken off calendar.

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

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

Case No. CV15-00100- Waller vs. Page

Tentative Ruling: **Appearance required.** The court will confirm the mediator and date for mediation.

Case No. CV15-00043 – Republic Indemnity Co of America vs. Alpine Fire Services

Tentative Ruling: **No appearance required.** The court has received a notice of settlement. A case management conference is scheduled for May 23, 2016, at 1:30p.m. If a dismissal is filed prior to that date, the matter will be taken off calendar.