

Tentative Rulings

Law & Motion and Family Law Calendar for May 11, 2015

May 7, 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, May 8, 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. PR13-00028 – Estate of McGushin

Tentative Ruling: **Granted.** Petitioner's counsel's Motion to be Relieved as Counsel is granted. The court notes that no opposition has been filed.

Case No. PR14-00016 – Guardianship of Hinde

Tentative Ruling: **No appearance required.** The court has received and reviewed the confidential guardianship status report, and finds that continued guardianship is in the best interests of the minor. The court schedules the annual review for May 9, 2016, 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. PR07-6356 – Guardianship of Merkley

Tentative Ruling: **No appearance required.** The court has received and reviewed the confidential guardianship status report, and finds that continued guardianship is in the best interests of the minor. The court schedules the annual review for May 9, 2016, 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.

Civil – 9:30 a.m.

Case No. CV14-00093 – Hunt vs. Firestone

Tentative Ruling: **No appearance required.** The court continues the Motion for Summary Judgment to May 27, 2015, at 9:30a.m., in order to prepare a tentative ruling on May 21. The court trial currently set for May 19, 2015, is vacated. The court will set a case management conference for May 27, 2015 at 2:00p.m., in order to reset the trial.

Case No. CV15-00029 – Mason vs. Feather River Rail Society

Tentative Ruling: **Granted.** Petitioners' Petition for Writ of Mandate to Compel Inspection of Records and Appointment of Election Inspector is granted.

The Feather River Rail Society ("FRRS") is a California nonprofit public benefit corporation, subject to the Nonprofit Public Benefit Corporation Law (Corp. Code sections 5110 et seq.) According to Corporations Code section 6330(a)(1), a member may inspect and copy the record of the names, addresses, and voting rights of all members, at reasonable times, beginning 5 business days after a demand for inspection. The demand must be in writing and must state the purpose for which the inspection rights are requested. Pursuant to Corporations Code section 6330(a)(2), a member may obtain from the corporate secretary, for a reasonable charge, a list of the names, addresses, and voting rights of members entitled to vote for directors as of the most recent record date or a specified date after the date of the demand. The demand must be in writing and must state the purpose for which the list is requested. The list must be made available within 10 business days after the demand is received or the date specified in the demand, whichever is later. Within 10 business days after receiving a demand for inspection the corporation may deliver to the demanding person "a written offer of an alternative method of achieving the purpose identified in the demands without providing access to or a copy of the membership list." An alternative is reasonable if it "reasonably and in a timely manner accomplishes the proper purpose set forth in the demand". Rejection of an offer must be in writing and must "indicate the reasons the alternative proposed by the corporation does not meet the proper purpose of the demand." (Corp. Code section 6330(c).)

Here, plaintiffs' counsel provided a written demand to the FRRS Secretary on March 3, 2015, for the membership list on behalf of his clients "in order to provide material relating to their candidacy for the upcoming election." The Secretary responded by letter on March 18, 2015, declining to provide the list, but offering an alternative, a "blind" mailing of the documents, with the members sending a check for the costs of mailing to the FRRS. The letter further states that plaintiffs should be cautioned about their legal exposure for making false or misleading statements, and that "[t]he FRRS will pursue to [sic] all remedies under the law should they include any statements that could be harmful to the organization." Plaintiffs' counsel's declaration in support of their Petition for Writ of Mandate states that he then attempted to resolve informally the issues presented in the petition on March 26, 2015, with FRRS's Secretary, and discussed a stipulated protective order restricting the lists' use and dissemination and confirming the list would not be used for marketing. This was rejected.

FRRS's Opposition to the Petition includes an e-mail letter from the Secretary, dated April 22, 2015, to plaintiffs' counsel, again offering a blind mailing, and requesting counsel's advisement in writing if plaintiffs accept or reject this offer. Yet, plaintiffs' Petition was already

filed on March 30, 2015. No writing was ever sent to FRRS rejecting the offer, indicating the reasons the alternative does not meet the proper purpose of the demand, as required in section 6330(c). Plaintiffs' Petition, however, states that the offer in the March 18 letter from the FRRS's Secretary was "preconditioned on a number of ambiguous and artificial conditions surrounding the submission of the materials to the Society..." The court will treat this as a written rejection of the offer, as it indicates the reasons the alternative does not meet the proper purpose of the demand. The Secretary's offer appears to be conditioning the sending of plaintiffs' documents on their approval, and threatening legal action if not approved.

The court finds that the conditional offer of a "blind mailing" is not a reasonable alternative here. The threat of legal action for any documents the Secretary finds "is harmful to the organization", could be a deterrent for any candidate submitting their election materials for mailing by FRRS. The court has also considered the multiple e-mails that demonstrate the hostility that exists between current leadership and the plaintiffs. A reasonable alternative would be for this court to issue a protective order, as suggested by plaintiffs' counsel, in order for the membership list to be provided only to plaintiffs' counsel with certain protections included.

With regard to the request for appointment of a neutral election inspector, the court also grants plaintiffs' request. Corporations Code section 5617(d) appears to provide broad authority with regard to the election of directors, including the statutory language that the court "may direct such other relief as may be just and proper." Plaintiffs have provided the court with neutral election inspector that appears to be appropriate in this case.

Case No. CV15-00031 – Petition of Vincent

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

Case No. LC14-00193 – Western Nevada Supply vs. Jensen

Tentative Ruling: **Appearance required.** The court will conduct the examination.

Family Law – 10:30 a.m.

Case No. FL12-00232 – Butts vs. Kilby

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

Case No. FL12-00195 – Clift vs. Nelson

Tentative Ruling: **Appearance required.**

Case No. FS15-00255 – County of El Dorado vs. Hoffman

Tentative Ruling: **Appearance required.** The court will discuss the visitation orders with the parties.

Case No. FS04-24455- County of Plumas vs. Valadez

Tentative Ruling: **Appearance required.**

Case No. FL09-00192 – Davis vs. Bruns

Tentative Ruling: **No appearance required.** This matter is taken off calendar.

Case No. FL15-00033 – Desentz vs. Crosby

Tentative Ruling: **Appearance required.**

Case No. FL14-00118 – Moore vs. Woods

Tentative Ruling: **Appearance required.**

Case No. FL06-27013 – Mar. of Pederson

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

Case No. FL15-00055Mar. of Taylor

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

Case No. FL13-00136 – Mar. of Tidwell

Tentative Ruling: **Appearance required.**

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. AD14-00003 and AD14-00004– Adoption Petition of Hopper

Tentative Ruling: **Appearance required of Father’s Counsel only.** OSC on failure to appear on April 27, 2015.

Case No. LC14-00185 – Barclays Bank Delaware vs. Burns

Tentative Ruling: **Appearance required.** OSC on failure to appear on April 13, 2015, and for failure to prosecute.

Case No. CV14-00195 – CSAA Insurance Exchange vs. Ferellgas, Inc.

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

Case No. CV14-00198 – Gage vs. Yates

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

Case No. CV14-00156 – Sebring vs. Peterson

Tentative Ruling: **Appearance required.** The court has received a declaration from defendants’ counsel, and will not issue sanctions on the OSC. The parties should be prepared to discuss ADR options and set a trial date.

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

Tentative Ruling: **Appearance required.** The court will discuss options for a discovery referee, and set a new readiness conference.

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. CV13-00187 – CSAA Insurance Exchange vs. Electrolux Home Products

Tentative Ruling: **Appearance required.**

Case No. PR09-00041 – Estate of Casteel

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

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

Tentative Ruling: **No appearance required.** The court will continue the case management conference until after the hearing on the demurrer. The next CMC will be June 22, 2015, at 2:00p.m.

Case No. CV14-00089 – Smith vs. Emmot

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