

# **Tentative Rulings**

## **Law & Motion and Family Law Calendar for May 9, 2016**

May 5, 2016, 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 6, 2016 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. PR15-00045 – Estate of Clarke**

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioner's Petition for Order for Preliminary Distribution and Payment of a Bill for Legal Services is granted. Petitioner is to prepare the Order.

#### **Case No. PR16-00014- Estate of Frank**

Tentative Ruling: **Granted, upon proof of publication.** If the proof of publication is filed prior to the hearing, the court will find that notice has been given as required by law. Petitioner's Petition to Administer Estate is granted. Petitioner is to prepare the Order.

#### **Case No. PR14-00016- Guardianship of Hinde**

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

#### **Case No. PR07-6356 – Guardianship of Merkley**

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

## **Civil – 9:30 a.m.**

### **Case No. CV13-00059 – Corey vs. Brown**

Tentative Ruling: **Denied.** Petitioner’s Motion to Set Aside and Vacate Trial Court’s Amended Ruling on Petition for Writ of Mandamus is denied. Petitioner argues the court erred in making certain factual findings. However, as held in *Gariboltti v. Hinkel* (2015) 243 Cal.App.4th 470, 477, “[a] motion to vacate under section 663 may only be brought when ‘the trial judge draws an incorrect legal conclusion or renders an erroneous judgment upon the facts found by it to exist.’” (citation omitted.) “In ruling on a motion to vacate the judgment the court cannot ‘in any way change any finding of fact. (citation omitted.)” (*Ibid.*)

Here, petitioner Corey argues the court made 29 inaccurate factual findings. For instance, Corey alleges the court erred in finding that a customer purchased a filter dryer on his way to Corey’s shop, identified in paragraph or number 1 of Corey’s Points and Authorities; and in finding that a customer paid Corey \$300 promptly, identified in paragraph or number 2. As illustrated above, Corey is arguing the correctness of the court’s factual findings and statements, not that the facts found compelled a different judgment.

In addition, the Corey argues prosecutorial misconduct and that he was deprived of the ability to present a witness, and therefore, the case should be dismissed. The court specifically addressed this allegation, and made factual findings that support the legal conclusion that Corey’s due process rights were not violated.

### **Case No. CV16-00033 – Matter of Johnson**

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

### **Case No. CV16-00031 – Matter of Smith-Barat**

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

### **Case No. CV16-00024 – Petition of Jiminez**

Tentative Ruling: **Appearance required.** The court has not received a proof of service on the father.

## **Family Law – 10:30 a.m.**

### **Case No. FL16-00068 – Avelar Rivas vs. Rivas**

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

### **Case No. FL14-00095 Greenberg vs. Cabral**

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

### **Case No. FL13-00017 – Mar. of Hardgrave**

Tentative Ruling: **No appearance required.** The court notes there is a judgment in the file that appears to resolve the custody and visitation issues.

### **Case No. FL16-00049– Mar. of Lambert**

Tentative Ruling: **This hearing is continued to 1:30p.m., in order to allow for telephonic court appearances and set a contested hearing.**

### **Case No. FL15-00014 – Mar. of Ray**

Tentative Ruling: **This hearing is continued to 1:30p.m., in order to allow for telephonic court appearances and set a contested hearing on the motion.**

### **Case No. FL15-00055 – Mar. of Taylor**

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioner's Request for Order is granted.

## **CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS**

### **Case No. FL10-00304 – Champlin vs. Hecker**

Tentative Ruling: **Appearance required.** The court will review the custody and visitation orders with the parties.

### **Case No. CV15-00038 – Dayton vs. Smith**

Tentative Ruling: **No appearance required.** The court has received a request for default, and a default has been entered.

### **Case No. LC15-00153 – Discover Bank vs. Burkman**

Tentative Ruling: **No appearance required.** The court notes this is a collections case. This matter is continued to October 24, 2016 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 sanction may be imposed.

### **Case No. PR15-00022 – Estate of Vincent**

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

### **Case No. CV15-00017 – Humphrey vs. Lancaster**

Tentative Ruling: **Appearance required.**

### **Case No. LC15-00148 – Investment Retrievers, Inc. vs. Johnston**

Tentative Ruling: **Appearance required.** OSC for failure to appear.

### **Case No. LF16-00149 – Mar. of Lambert**

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

### **Case No. FL15-00014 – Mar. of Ray**

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

### **Case No. FL15-00131 Mlakar vs. Brooks**

Tentative Ruling: **Appearance required.** The court will review the custody and visitation orders.

### **Case No. CV15-00157 – Molina vs. Pegasus Legal Funding**

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

**Case No LC15-00054 – Bank of America vs. Guillory**

Tentative Ruling: **Appearance required.**

**Case No. LC16-00012 – Machlan vs. Greenville Auto Parts**

Tentative Ruling: **Appearance required.**