

TENTATIVE RULINGS

FOR: November 1, 2016

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – No tentative ruling will be posted because access to records is not permitted until 60 days after the complaint is filed. Parties **must appear** for all unlawful detainer demurrers, motions to quash, and other matters. After 60 days, tentative rulings will be posted in accordance with the local rules.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. Diane Price, Dept. C (Historic Courthouse)

In the Matter of Andrea S. Flores

16CV000760

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition for name change is GRANTED without need for appearance.

.....
In the Matter of Teresa Gallegos Chavez

16CV000864

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition for name change is GRANTED without need for appearance.

.....
Conservatorship of Cathy Cameron

16PR000146

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

TENTATIVE RULING: The matter is continued to November 17, 2016, at 8:30 a.m. in Dept. C to allow the Public Defender to meet with the proposed conservatee.

.....

PETITION FOR RENEWAL OF APPOINTMENT OF LPS CONSERVATOR

APPEARANCE REQUIRED

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. C (Historic Courthouse)

Jose Perez v. Santiago Rodriguez, et al.

16CV000124

MOTION FOR DISCOVERY SANCTIONS

TENTATIVE RULING:

A. Monetary Sanctions

Defendant Santiago Rodriguez’s motion for monetary sanctions against plaintiff Jose Perez’s counsel, Charles B. Wood, III, is GRANTED IN PART in the amount of \$2,500, payable to defendant’s counsel within 10 calendar days of service of notice of entry of order. (Code Civ. Proc., §§ 2023.010, 2023.030; *Peat, Marwick, Mitchell & Co. v. Super. Ct.* (1988) 200 Cal.App.3d 272, 287-91 [sanctions under the court’s inherent power].) Susan B. Terrado’s (Rodriguez’s counsel) supporting declaration is confusing. The amount awarded, therefore, represents Terrado’s flat fee for preparing this motion. (Terrado Decl., ¶¶ 14-17.)

This is a dispute between Wood and Terrado. Wood requested that Terrado produce, for “inspection and copying,” all original documents detailed in his discovery request. (*Id.*, Ex. A at p. 1:25.) Noticeably absent from Wood’s request was a demand for testing or sampling of any of the materials. Terrado agreed to meet with Wood at his office to allow him to inspect the documents and make copies. (*Id.*, ¶ 3.) On August 26, 2016, during what Wood acknowledges was the “inspection,” Terrado produced a copy of the purported original contract. (Wood Decl., ¶ 5.) According to Wood, Terrado represented that Perez took the original contract after it was signed and Rodriguez took a copy. (*Id.*) As a result, Terrado only produced a “first generation copy of the original” of the contract in dispute. (*Id.*) Since Perez’s position is that he never signed the contract, Wood informed Terrado at the inspection that he intended to have an expert examine the produced copy. (*Id.*, ¶ 6.) Wood then physically took the document, placed it in an envelope, sealed it with tape, and maintained custody of it. (*Id.*) Wood declares that Terrado never objected to losing custody of the copy. (*Id.*, ¶ 7.) Terrado provides she objected and was “shocked” at what occurred. (Terrado Decl., ¶ 5.) Terrado states she never consented to Wood taking possession of the document, which her subsequent demands for return of the document support. (*Id.*, ¶¶ 6-11; Wood Decl., ¶¶ 9-12.)

Based on this record, the Court finds that Wood abused the discovery process by taking physical control of the document beyond the scope of his request for production of documents and holding it hostage for nearly two months. (Code Civ. Proc., § 2023.010; *Mattco Forge, Inc. v. Arthur Young & Co.* (1990) 220 Cal.App.3d 1429, 1440.) The request for production of documents

only sought to inspect and copy documents. Wood never should have taken long-term custody and control of the document for testing without serving a proper discovery request. Although the attorneys' versions conflict as to whether Terrado objected on August 26, 2016, it should have quickly become clear to Wood that Terrado wanted the document returned as evidenced by her various demands to Wood. Instead of returning the document, Wood maintained control of it for 53 days, and now unbelievably claims Terrado failed to properly meet-and-confer as a basis to defeat the current motion. Such a claim is not supported by the record. Indeed, it took the filing of this motion to suddenly complete the expert's examination of the document to finally facilitate a return of the document to Terrado on October 18, 2016. (Wood Decl., Exs. 9-11.)

Rodriguez's request for monetary sanctions against Perez is DENIED. Perez did not play a part in this dispute between the attorneys.

B. Evidentiary Sanctions

Rodriguez's motion for evidentiary sanctions is DENIED. As noted, Wood's actions constitute a misuse of the discovery process. Faced with misuse of the discovery process, the Court may impose whatever sanctions are just, including evidence sanctions. (Code Civ. Proc., § 2023.030.) "The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks, but the court may not impose sanctions which are designed not to accomplish the objects of discovery but to impose punishment." (*Laguna Auto Body v. Super. Ct.* (1991) 231 Cal.App.3d 481, 490, citing *Motown Records Corp. v. Super. Ct.* (1984) 155 Cal.App.3d 482, 489.) The sanctions imposed must be tailored to "fit the crime." (*Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1293.) Rodriguez asks the Court to establish that a copy of the document that Wood took be established as the best evidence of the agreement between the parties, and prohibit Wood from opposing admission of the document into evidence based on the best evidence rule. Entering these evidentiary sanctions at this stage, without more, would be unjust because "[t]he penalty should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery." (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 793.) Wood returned the document on October 18, 2016, and imposing monetary sanctions will be effective in compelling Wood to cease future misuse of the discovery process. (Wood Decl., Exs. 9-11.) If Wood continues to flout the discovery process, then imposing other sanctions may be appropriate.

The parties shall meaningfully meet-and-confer prior to filing any additional discovery motions with this Court.

**PROBATE CALENDAR – Hon. Rodney Stone, Dept. F (Criminal Courts Bldg.-
1111 Third St.)**

Estate of New, Helen

PR18695

PETITION FOR APPROVAL OF FIRST AND FINAL ACCOUNT OF TRUSTEE AND
PAYMENT OF TRUSTEE FEES AND ATTORNEY'S FEES AND FOR DISTRIBUTION OF
TRUST

TENTATIVE RULING: GRANT Petition, including fees as prayed.