

TENTATIVE RULINGS

FOR: November 18, 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. Rodney Stone, Dept. F (Criminal Courts Bldg.- 1111 Third St.)

Conservatorship of Lucette Sherwood

16PR000149

PETITION FOR PROVISIONAL AND FINAL ORDER ACCEPTING TRANSFER OF CONSERVATORSHIP FROM ARIZONA; FOR MODIFICATION OF THE CONSERVATORSHIP TO CONFORM TO CALIFORNIA LAW; FOR APPOINTMENT OF COURT INVESTIGATOR; FOR APPOINTMENT OF CO-CONSERVATOR; FOR SUBSTITUTED JUDGMENT AND REQUEST FOR INSTRUCTIONS

APPEARANCE REQUIRED

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Conservatorship of Rita Arlene Fidler

26-67061

REVIEW HEARING

TENTATIVE RULING: The matter is continued to December 9, 2016, at 8:30 a.m. in Dept. F to allow the conservator to file: (1) Notice of Conservatee's Rights (Judicial Council form GC-341); and (2) Determination of Conservatee's Appropriate Level of Care (Judicial Council form GC-355).

CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. F (Criminal Courts Bldg.-1111 Third St.)

Victoria Romero, et al. v. Queen of the Valley Medical Center

16CV000661

1) DEFENDANT QUEEN OF THE VALLEY MEDICAL CENTER, § DEMURRER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

2) DEFENDANT QUEEN OF THE VALLEY MEDICAL CENTER, § MOTION TO STRIKE PORTIONS OF PLAINTIFFS' FIRST AMENDED COMPLAINT

APPEARANCE REQUIRED. In accordance with the rules of judicial conduct, Judge Rodney G. Stone discloses that he was on the Queen of the Valley Medical Center Foundation Board of Directors for 12 years, with his term ending in 2006. At the end of his term, he was named an honorary member of the QVMC Foundation Board of Directors, but is no longer active on the Board. Further, Judge Stone is acquainted with Walt Mickens, CEO of QVMC, as they are both members of the Napa Valley Country Club. Nevertheless, Judge Stone believes he can be fair and impartial in this matter.

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Thomas Borges, et al. v. Western Progressive, LLC, et al.

26-67925

(1) DEMURRER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

TENTATIVE RULING: The Demurrer is SUSTAINED WITH LEAVE TO AMEND. Defendant's Request for Judicial Notice is GRANTED. This court previously sustained demurrers to Plaintiffs' Complaint on April 29, 2016 because:

Plaintiffs' claims are based on speculation that the agents for the trustee and beneficiary were not authorized, but there are no facts alleged to support these claims. The trustee, mortgagee, or beneficiary, or any of their authorized agents may initiate a non-judicial foreclosure. (Civ. Code § 2924(a)(1).) There is no requirement that the power of attorney must be recorded under the facts of this case; Civil Code section 2933 applies to cases where a mortgage is executed on behalf of a principal.

Yvanova v. New Century Mortgage Corp. (2016) 62 Cal.4th 919 applies to cases where the assignment at issue is void, not merely voidable, and considering the judicially noticed documents in this case, it does not appear Plaintiff can properly allege any void assignment. In regards to the two Notices of Default, the first Notice of Default was rescinded, leaving only the second Notice of Default. Plaintiff has not cited any authority prohibiting these filings.

Plaintiffs' First Amended Complaint fails to allege any new facts, other than at paragraph 17, and those new allegations are again speculative regarding where documents were actually signed.

Plaintiffs are allowed one final opportunity to plead facts sufficient. Any amended complaint shall be filed and served within 10 days of the date Defendant serves notice of entry of the court's order. (Code Civ. Proc., § 472b.)

2) MOTION TO STRIKE PORTIONS OF PLAINTIFFS' FIRST AMENDED COMPLAINT

TENTATIVE RULING: The Motion is GRANTED WITH LEAVE TO AMEND. The allegations regarding conspiracy are not sufficiently pled and the emotional distress claims are inapplicable to the facts of this action. Plaintiffs are allowed one final opportunity to plead facts sufficient.