

TENTATIVE RULINGS

DEPT. CM7

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TENTATIVE RULING

Date: 05/08/2024

Case #	Case Name	Tentative
()		TENTATIVE RULING Case: () Calendar No.: Date: 05/08/2024
(01301697)	Hesford - Trust	TENTATIVE RULING Case: (01301697) Calendar No.:2 Date: 05/08/2024 MOTION FOR LEAVE TO AMEND Petitioner John C. Hesford, Jr.'s Motion for Leave to Amend is GRANTED . On 1/12/23, Petitioner filed a Petition. On 7/18/23, Petitioner filed an Amended Petition before a Response was filed. On 9/20/23, Respondent Mark A. Hesford filed an Objection and Response to the Amended Petition. Thereafter, on 11/20/23, Petitioner filed another Petition, seeking some of the same relief, albeit

	<p>on a different legal basis, as well as entirely new causes of action. (ROA 39.)</p> <p>Respondent moved to strike the 11/20/23 Petition on the grounds that Petitioner had not sought leave of court. In opposition to the motion to strike, Petitioner argued that the 11/20/23 Petition was not an amended petition but was rather a brand new petition that could run concurrently with the 9/20/23 Petition. In ruling on the motion to strike, the court noted that the 11/20/23 Petition sought the same relief as the 9/20/23 Petition (i.e., to have Petitioner named the sole beneficiary of the Trust), as well as new causes of action. Thus, the 11/20/23 Petition was <i>both</i> an amendment to the previous petition and a new petition. The court found that the 11/20/23 Petition “superseded” the 9/20/23 Petition and was, therefore, an “amended” petition for which leave of court must be granted. (ROA 75.)</p> <p>In ordering the 11/20/23 Petition stricken, the court noted that Petitioner had a motion for leave to amend pending and cautioned Petitioner to ensure the motion complied with California Rules of Court, Rule 3.1324. (Id.)</p> <p>On 5/1/24, Petitioner filed a supplement to his motion for leave to amend. The motion, as supplemented, substantially complies with Rule 3.1324.</p> <p>Respondent’s sole objection to the initial motion was that it did not comply with Rule 3.1324. Respondent’s sole objection to the supplement is that it was untimely. Pursuant to Code of Civil Procedure section 1005, Respondent is entitled to service of the motion and any supplements 16-court days before the hearing. However, Respondent has had a copy of the desired amended petition since 11/20/23 and copy of the initial motion since 12/22/23. Thus, Respondent has known for six months that Petitioner is seeking to amend the petition to state the proper legal basis for the requested relief based on the same set of facts. While the supplement complies with the technical requirements of Rule 3.1324, it does not offer any new information or arguments to which Respondent must respond.</p> <p>In opposing the motion and the supplement, Respondent has not offered any reason for denying leave to amend.</p>
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		<p>"The policy favoring amendments is so strong that it is a rare case in which denial of leave to amend can be justified." (<i>City of Torrance v. Southern California Edison Company</i> (2021) 61 Cal.App.5th 1071, 1091, citing <i>Howard v. County of San Diego</i> (2010) 184 Cal.App.4th 1422, 1428; see also <i>Central Concrete Supply Co v. Bursak</i> (2010) 182 Cal.App.4th 1092, 1101-1102 ["Courts must apply a policy of great liberality in permitting amendments to the complaint when no prejudice is shown to the adverse party."]; and <i>Morgan v. Superior Court</i> (1959) 172 Cal.App.2d 527, 530 ["If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion."]).</p> <p>Further complicating matters, on 5/2/24, Petitioner filed the Second Amended Petition (ROA 79), again without leave. The proper procedure is to file a copy of the "proposed" amended petition as an exhibit to the motion for leave to amend. (CRC, Rule 3.1324(a)(1).) The amended petition should be filed after leave of court is granted.</p> <p>Nonetheless, the court will not strike ROA 79 and require it to be refiled, as the law does not require a futile act. (Civ. Code § 3532.) Counsel is kindly advised to carefully adhere to the procedures of Rule 3.1324 going forward.</p> <p>Petitioner's motion for leave is GRANTED. The Second Amended Petition filed on 5/2/24 (ROA 79) is now the operative pleading.</p> <p>Counsel for Petitioner is to give notice.</p>
(01160779)	Thackeray-Trust	<p style="text-align: center;">TENTATIVE RULING</p> <p>Case: (01160779) Calendar No.: 3</p>

Date: 05/08/2024

MOTION FOR ORDER TO SHOW CAUSE

Petitioner Dale A. Thackeray ("Dale") moves the court to set an Order to Show Cause as to why Morgan Stanley IRA should not be compelled to disburse all funds in IRA account ending 519 to Petitioner.

The court notes preliminarily that there is no proof of service accompanying this motion. The failure to serve this motion on all interested parties, including Morgan Stanley, is cause for denial. **Counsel should be prepared to discuss the status of service.**

Background

The decedent Harold P. Thackeray, Jr. established the 2013 Harold P. Thackeray Trust. The decedent had two children, Dale and Alana Navarro ("Alana"). Pursuant to the Trust, Alana was to receive real property located in Garden Grove, and Dale was to receive "all Trust bank accounts or accounts with financial institutions." (ROA 2, Ex. A, Art. 5, § 5.3.) The Trust does not mention the Morgan Stanley account, and the decedent did not designate a beneficiary of the Morgan Stanley account.

The decedent also left a pour over will, leaving everything to the Trustee of the Trust.

The decedent passed away on 11/26/19.

Efforts to Obtain the Morgan Stanley Account

On 9/15/20, Petitioner filed a Petition against the Trustee. (ROA 2.) The Petition alleges that the Trustee breached her duties by failing to ensure that the Morgan Stanley account was transferred to the Trust. (Id.) On 9/24/21, the Trustee filed an Opposition to the Petition. (ROA 27.) In the Opposition, the Trustee admits that the Morgan Stanley account did not have a named beneficiary and that the account should go to Petitioner through the Trust. The Trustee states that she initiated the process and was working to have the account transferred to the Trust. (Id.)

On 1/12/22, the Trustee opened a probate case solely for the purpose of probating the Morgan Stanley account. The Trustee was issued Letters Testamentary. (OCSC Case No. 01240566.) The first supplement to the Petition in the probate case indicates that the Morgan Stanley account is the only asset of the estate. However, the Inventory & Appraisal reflects zero assets, even though it does not appear that the Morgan

		<p>Stanley account was ever passed through the estate.</p> <p>On 5/30/22, the Trustee and Petitioner reached a settlement in the instant trust proceeding. (ROA 50.) The recitals in the settlement agreement state that all efforts to obtain the money from Morgan Stanley through the probate proceeding and the small estate affidavit "were rejected by Morgan Stanley." The terms of the settlement agreement state that the Trustee "shall assist in good faith with the transfer of the Morgan Stanley account, and will not object to any attempt by [Petitioner] to obtain the Morgan Stanley account by court order or otherwise." On 7/19/22, the Trust Petition was dismissed. (ROA 53.)</p> <p>On 8/3/23, the Trustee/Executor filed a petition for dismissal of the probate action because she wanted to use a small estate affidavit instead. On 3/13/24, the probate petition was dismissed. For reasons unknown to the court and not addressed in this motion, the small estate affidavit did not resolve the issue. The court suspects that the small estate affidavit may have been unsuccessful because the probate proceeding was still pending at the time it was submitted to Morgan Stanley. Counsel should be prepared to discuss who prepared the small estate affidavit and why it was rejected by Morgan Stanley.</p> <p>The court cannot order Morgan Stanley to distribute the money directly to Petitioner. It appears that Morgan Stanley should distribute the money to the Trustee pursuant to the decedent's will. The Trustee would then distribute the money according to the terms of the Trust. Counsel should be prepared to discuss.</p>
(01289121)	ZH Doe - Minor's Compromise	<p style="text-align: center;">TENTATIVE RULING</p> <p>Case: 01289121 Calendar No.: 4</p> <p style="text-align: center;">Date: 05/08/2024</p>

		<p style="text-align: center;">MOTION TO BE RELIEVED AS COUNSEL / REVIEW HEARING</p> <p>Attorneys Morgan A. Stewart of Manly, Stewart & Finaldi, and Mike F. Ayaz of Blake & Ayaz, ALC move to be relieved as counsel for Jane ZH Doe and her Guardian Ad Litem Jane TH Doe.</p> <p>The court notes preliminarily that Blake & Ayaz, ALC is not counsel of record in this action. Thus, this motion pertains only to Morgan A. Stewart.</p> <p>An attorney's right to withdraw as counsel is conditioned upon compliance with California Rules of Court, Rule 3.1362 and Orange County Local Rule 601.21. The court's records reflect that counsel has not complied with Local Rule 601.21 which requires the issuance of a citation to any client that is also a fiduciary.</p> <p>Further, counsel has not fully complied with CRC Rule 3.1362. Counsel must file and serve all three mandatory forms (MC-051, MC-052, and MC-053). (Cal. Rules Court, Rule 3.1362(d).) Form MC-052 is missing.</p> <p><u>Review Hearing</u></p> <p>It appears that the annuity has been set up. (ROA 39.) Counsel should be prepared to discuss whether any further action is necessary.</p> <p>The court's tentative is to continue this motion, and if necessary the review hearing, to 7/10/24 at 1:30pm in Dept. CM07. Counsel is ordered to comply with CRC Rule 3.1362 and Local Rule 601.21.</p>
(01258694)	Bell - Trust	<p style="text-align: center;">TENTATIVE RULING</p> <p>Case: 01258694</p>

Calendar No.:5

Date: 05/08/2024

MOTION FOR 128.7 SANCTIONS

Trustee/Objector's motion for sanctions pursuant to Code of Civil Procedure section 128.7 is **DENIED**.

This motion is improperly brought against Petitioners Regina B. Conway and Patrick R. Bell. Code of Civil Procedure section 128.7 allows a party to move for sanctions against attorneys or *self-represented* parties based on the certifications they have made to the court. (Code of Civ. Proc. § 128.7(a),(b), and (d)(1).) Thus, the motion is denied as to Petitioners on procedural grounds.

The motion is also denied as to counsel Maryetta C. Marks on procedural grounds, as there is no evidence that Objector/Trustee complied with the safe harbor provision of section 128.7.

Under CCP §128.7 a party moving for sanctions must serve the proposed motion, with the hearing date and all supporting papers, on the allegedly offending party at least 21 days before the motion is filed. Section 128.7(c) reads, in pertinent part: "A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in section 1010, but shall not be filed with or presented to the court unless, within 21 days of service of the motion, or any other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected."

Here, counsel for Trustee/Objector only sent Petitioners' counsel a letter, informing Petitioner that Objector/Trustee would seek sanctions pursuant to 128.7 if the Petition was not withdrawn. There is no evidence that this motion was served with the letter or at any

		<p>other time that was at least 21 days before this motion was filed.</p> <p>In <i>Cromwell v. Cummings</i> (1998) 65 Cal.App.4th Supp. 10, 14-15 ("<i>Cromwell</i>"), the defendant filed a Section 128.7 motion less than 30 days after it was served on plaintiff's counsel. (<i>Cromwell</i> was decided before the safe harbor provision was shortened from 30 days to 21 days.) Defendant argued that he had "substantially complied" with the safe harbor provision of section 128.7 because he had sent two letters raising the deficiencies in the pleading and threatening to seek sanctions pursuant to section 128.7. (<i>Id.</i>) In rejecting this argument, the Court in <i>Cromwell</i> held that strict compliance with the safe harbor provision was an absolute prerequisite to an award of sanctions. (<i>Id.</i> at p. 15.)</p> <p>Since moving party did not strictly comply with section 128.7, the motion must be denied. The court makes no finding as to the merits of the Petition. This order is without prejudice to Trustee/Objector's right to bring a subsequent motion for sanctions or a dispositive motion.</p> <p>.</p>
(01379726)	Nguyen - Minor's Compromise	<p style="text-align: center;">TENTATIVE RULING</p> <p>Case: 01379726</p> <p>Calendar No.: 7</p> <p style="text-align: center;">Date: 05/08/2024</p> <hr/> <p style="text-align: center;">MOTION TO SEAL</p> <p>Petitioner Jimmy Nguyen's Amended Motion to Seal (ROA 48) is GRANTED in part and DENIED in part.</p> <p>Unless confidentiality is required by statute or rule of court, California court records are presumed to be open to the public. (Cal. Rules of Court, rule 2.550(c).) "Probate proceedings, including a petition for minor's compromise, are</p>

	<p>not closed proceedings. No statute exempts probate files from the status of public records.” (<i>Copley Press, Inc. v. Superior Court</i> (1998) 63 Cal.App.4th 367, 376.) When individuals employ the public powers of state courts to accomplish private ends, “they do so in full knowledge of the possibly disadvantageous circumstance that the documents and records filed ... will be open to public inspection.” (<i>Ibid.</i>)</p> <p>Absent circumstances not present here, the court may seal the records at issue only if it expressly finds facts establishing that:</p> <ol style="list-style-type: none">1. There exists an overriding interest that overcomes the right of public access to the record;2. The overriding interest supports sealing the record;3. A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;4. The proposed sealing is narrowly tailored; and5. No less restrictive means exist to achieve the overriding interest. <p>(Cal. Rules of Court, rule 2.550(d).)</p> <p>The party moving to have a record sealed bears the burden of proving such facts. (See <i>H.B. Fuller Company v. Doe</i> (2007) 151 Cal.App.4th 879, 894-895.)</p> <p><u>Amended Petition (ROA 31) and Supplemental Declaration (ROA 32)</u></p> <p>Petitioner seeks to seal portions of the Amended Petition for Approval of Compromise, as well as portions of the Supplemental Declaration of Yoshiaki C. Kubota. The redacted version of these documents were filed jointly as the initial Petition for Approval of Compromise. (ROA 2.) The unredacted versions of these documents were filed on 3/13/24. (ROAs 31, 32.)</p> <p>As to the foregoing documents, the declaration in support of this motion sets forth facts sufficient to find overriding interests that will be prejudiced if this motion is denied. The proposed sealing is narrowly tailored and no less restrictive means exist to achieve the overriding interest. The court orders the unredacted documents (ROAs 31 and 32) to remain permanently sealed.</p>
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Minute Order (ROA 39) and Order Approving Compromise (ROA 42)

Petitioner further seeks to seal the court's minute order of 3/13/24 (ROA 39) and the Order Approving Compromise (ROA 42). Finding an overriding interest exists, the court **orders** these documents to remain permanently sealed. However, Petitioner is **ordered** to file a redacted Order Approving Compromise, redacting all dollar amounts only, within 5 days of this ruling. The failure to file the redacted Order Approving Compromise may result in the court's unsealing of ROA 42.

Notice of Lodging (ROA 28)

Petitioner requests that the court seal the Notice of Lodging filed 3/13/24 (ROA 28). The court notes that Exhibits 1 and 2 are not attached to the Notice of Lodging. Thus, there is no reason to seal it.

As to the hard copy Exhibits 1 and 2 lodged with the court, such documents may be retrieved by Petitioner. Counsel should be prepared to discuss his availability to retrieve lodged documents. Counsel should note that the Orange County Superior Court requires all documents filed by represented parties to be filed electronically. (OCSC Rule 352.)

Instant Motion to Seal

It is unclear whether Petitioner is requesting that the court seal the initial motion to seal (ROA 11), the amended motion to seal (ROA 48), or both. Regardless, the court does not find good cause to order the motions sealed, and Petitioner has not proposed any specific redactions.

Future Declaration

The court is not able to grant Petitioner's request to seal the "future Declaration Re: Proof of Purchase of the Annuity and the exhibits attached thereto." California Rules of Court, rules 2.550-2.551, set forth a specific procedure for sealing court documents. Petitioner should adhere to this procedure moving forward.

		<p>So long as a document is filed conditionally under seal, the court is able to review it and make any determinations and orders necessary. Thus, adhering to the proper procedure for sealing will not delay the resolution of this case or prejudice the parties.</p> <p><u>ORDERS</u></p> <p>ROAs 31, 32, 39, and 42 are to remain permanently sealed. Such sealing order is without prejudice to the right of any person to seek an order unsealing such documents pursuant to CRC, Rule 2.551(h).</p> <p>Petitioner is ordered to file a redacted Order Approving Compromise, redacting all dollar amounts only, within 5 days of this ruling.</p> <p>All other requests for sealing are denied.</p> <p>Counsel for Petitioner is directed to give notice.</p>
(01061024)	Schreiber - Probate	<p style="text-align: center;">TENTATIVE RULING</p> <p>Case: 01061024 Calendar No.:9</p> <hr/> <p style="text-align: center;">Date: 05/08/2024</p> <p>Before the court is a motion by Kevin Schreiber to reinstate the Petition for Removal.</p> <p>On 9/13/23, Kevin Schreiber filed a Petition for Removal. (ROA 622.) On 12/13/23, the Petition for Removal was dismissed without prejudice for failure to appear. (ROA 669.) Mr. Schreiber represents to the court that he tried to attend the hearing remotely while out of town, but his hotel was temporarily without internet service.</p> <p>The court is inclined to grant this motion. However, there is no proof of service of this motion. Mr. Schreiber should be prepared to discuss the status of service.</p>

(01078628)	Tedesco - Trust	<p style="text-align: center;">TENTATIVE RULING</p> <p>Case: 01078628 Calendar No.: 10</p> <p style="text-align: right;">Date: 05/08/2024</p> <hr/> <p style="text-align: center;">DEMURRER</p> <p>The Demurrer (ROA 725) is OVERRULED as moot. Co-Trustees Laura K. White, Julie M. Bas, and Sandra L. Kay demurrer to the Petition filed by Gloria Tedesco on 10/16/23 (ROA 708). Gloria Tedesco filed an Amended Petition on 4/23/24. (ROA 808.) The filing of an amended petition after a demurrer is filed, but before it is decided, renders the demurrer moot. (<i>JKC3H8 v. Colton</i> (2013) 221 CA4th 468, 477.)</p>
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