

Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR DEPARTMENT NAME
HON. COMMISSIONER ANDERSON

Date: 3/19/2025

Court Room Rules and Notices

#	Case Name	Tentative
1	Jacobson – Trust (00975081)	<p style="text-align:center">MOTION FOR TRIAL SETTING PREFERENCE</p> <p>The motion by Lawrence Jay Jacobson ("Lawrence") for trial setting preference is DENIED.</p> <p><u>Evidentiary Objections</u></p> <p>The evidentiary objections filed by Jeffrey Alan Jacobson ("Jeffrey") (ROA 1948) are sustained as to objections 1-2 and overruled as to objection 3.</p> <p>Lawrence's evidentiary objections (ROA 1958) are sustained as to objection 3 and overruled as to objections 1 and 2.</p> <p><u>Statement of Law</u></p> <p>Prior to 1990, the law required the court to give trial setting preference to any party <i>70 years of age or older</i>, so long as the party had a substantial interest in the case as a whole. Such law was amended, and Code of Civil Procedure section 36(a) now provides as follows: "A party to a civil action <i>who is over 70 years of age</i> may petition the court for a preference, which the court shall grant if the court makes both of the following findings: (1) The party has a substantial interest in the action as a whole. (2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation." (Code Civ. Proc., § 36, subd. (a); <i>Isaak v. Superior Court</i> (2022) 73 Cal.App.5th 792, 796; <i>Pilliod v. Monsanto Co.</i> (2021) 67 Cal.App.5th 591, 639, fn. 31.) (Emphasis added.) "An affidavit submitted in support of a motion for preference under subdivision (a) of Section 36 may be signed by the attorney for the party seeking preference based upon information and belief as to the medical diagnosis and prognosis of any party." (Code Civ. Proc., § 36.5; <i>Fox v. Superior Court</i> (2018) 21 Cal.App.5th 529, 534.)</p> <p>Notwithstanding any other provision of law, the court may in its discretion grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference. (Code Civ. Proc., § 36, subd. (e).) This decision "rests at all times in the sound discretion of the trial court in light of the totality of the</p>

circumstances.” (*Salas v. Sears, Roebuck & Co.* (1986) 42 Cal.3d 342, 344.)

Merits of the Motion

Lawrence Has Failed to Establish That He Is “Over 70 Years of Age”

In order to be entitled to trial preference, one of the conditions is for the Moving Party to establish they are “over 70 years of age....” (Code Civ. Proc., § 36, subd. (a).) The evidence presented indicates that Lawrence Jay Jacobson is 70 years old. (DOB:10/12/1954)

The Declaration of Leslie R. Smith did not provide *admissible* evidence to support the claim that Lawrence is over the age of 70. Instead, her declaration as to Lawrence’s age constituted inadmissible hearsay. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2024) ¶¶ 12:247.3, 12:272.1 [declaration by attorney as to a party’s age is not sufficient].) Nevertheless, the Opposition in Exhibits C, D and G appear to concede that Lawrence was born on October 12, 1954 – which would make him 70 years of age, not **over** 70 years of age as the statute requires. This alone requires that the request for preference under Code of Civil Procedure section 36(a) must be denied.

Lawrence has a Substantial Interest in the Matter However his Health Does Not Warrant Preference

“There can be little argument that section 36 was enacted for the purpose of assuring that an aged or terminally ill plaintiff would be able to participate in the trial of his or her case and be able to realize redress upon the claim asserted. Such a preference is not only necessary to assure a party’s peace of mind that he or she will live to see a particular dispute brought to resolution, but it can also have substantive consequences. The party’s presence and ability to testify in person and/or assist counsel may be critical to success.” (*Looney v. Superior Court* (1993) 16 Cal.App.4th 521, 532; see *Warren v. Schechter* (1997) 57 Cal.App.4th 1189, 1199 [section 36 “is a legislative recognition of the maxim that ‘justice delayed is justice denied’”].)

It appears undisputed that Lawrence has a substantial interest in the litigation of the subject trust.

With respect to Lawrence’s health, while it is undisputed that Lawrence has a rare and incurable form of blood cancer, there is no evidence that his condition is such that he would be prejudiced by not having a trial within 120 days.

"In its discretion, the court may grant a motion for preference that is accompanied by clear and convincing medical documentation that concludes that one of the parties suffers from an illness or condition raising substantial medical doubt of survival of that party beyond six months, and that satisfies the court that the interests of justice will be served by granting the preference." (Code Civ. Proc., § 36, subd. (d); see *Hamilton v. Asbestos Corp.* (2000) 22 Cal.4th 1127, 1134, 1148 [recognizing subdivision (d) allows the trial court to grant a motion for trial preference for a terminally ill patient, as there was "substantial medical doubt that he would survive for more than six months"]; see *Warren v. Schechter* (1997) 57 Cal.App.4th 1189, 1199 [same].)

The only evidence presented by Lawrence regarding his health condition is a letter from Dr. Ari D. Barron dated 10/10/24. The letter states that Lawrence has Polycythemia Vera. It states that such condition is triggered by major stress events and that undue stress events may accelerate the disease. It describes common symptoms as extreme fatigue and shortness of breath. It states that Lawrence's condition is stable due to his medications and therapies. It states the disease becomes more unpredictable as it worsens.

The court notes that Dr. Barron's letter mostly discusses the nature of Polycythemia Vera in general. It does not state that Lawrence's condition is triggered by stress or that Lawrence suffers from fatigue or shortness of breath. Importantly, Dr. Barron does not opine that Lawrence's condition has worsened as the result of the stress of litigation or that his condition is worsening at all. Rather, it says Lawrence's condition (as of the date of the letter which is more than six years after this litigation commenced) is stable. Such evidence is not sufficient for the court to determine that an accelerated trial date is necessary to prevent prejudice to Lawrence. Arguably, the stress of an accelerated trial might exacerbate Lawrence's condition.

Neither is the court persuaded that Lawrence is entitled to trial setting preference under subdivision (e) of Code of Civil Procedure section 36 which states, "Notwithstanding any other provision of law, the court may in its discretion grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference."

While the court understands that Phase II of this trial has been delayed several times, there is no single cause for the delays. The court's records reflect that delays have resulted in part due to changes with courtroom assignments, in part due to the filing of new pleadings by Jeffrey, and in part due to the failure of parties, including Lawrence, to comply with discovery. None

		<p>of these delays indicate that the interest of justice warrants an order that trial be conducted within 120 days.</p> <p>Lawrence also expresses concern about the aging of parties who will be key witnesses. There is no evidence that any party is suffering from memory loss or any condition that would make them unavailable at trial. Moreover, deposition transcripts can be used at trial in lieu of any unavailable witness and may also be used to impeach and/or refresh the memory of any witness whose memories may fail them at the trial.</p> <p>Overall, the court is not persuaded that Lawrence is entitled to trial setting preference in the interest of justice.</p> <p>Counsel for Jeffrey is ordered to give notice.</p>
2	ZH Doe - Minor's Compromise (01289121)	<p style="text-align: center;">MOTION TO BE RELIEVED AS COUNSEL / REVIEW HEARING</p> <p>Attorney Morgan A. Stewart of Manly, Stewart & Finaldi moves to be relieved as counsel for Jane ZH Doe and her Guardian Ad Litem Jane TH Doe.</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.</p> <p>Counsel has complied with Local Rule 601.21 by personally serving a citation on Jane TH Doe.</p> <p>The court's records do not reflect that an Order Granting Attorney's Motion to Be Relieved – Civil (MC-053) has been served or filed, as required by Rule 3.1362. Counsel should be prepared to discuss this deficiency.</p> <p><u>Review Hearing</u></p> <p>This Review Hearing re proof of deposit has been continued several times. Counsel should be prepared to discuss the following:</p> <ol style="list-style-type: none"> 1. Confirmation that the annuity was purchased and funded; and 2. Whether the money to be deposited into a blocked account was provided to the petitioner Jane TH Doe, or whether counsel still has it.
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