

TENTATIVE RULINGS

FOR: January 11, 2018

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 – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

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. F (Criminal Courts Bldg.-1111 Third St.) at 8:30 a.m.

**In the Matter of Jenol McLinn and Rita C Emelia McLinn
Revocable Intervivos Trust**

17PR000212

MOTION FOR CHANGE OF VENUE

APPEARANCE REQUIRED

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In the Matter of the Woodrow A. and Charlotte M. Hahn Trust

17PR000256

PETITION FOR ORDER APPROVING MODIFICATION OF TRUST TERMS UNDER
PROBATE CODE SECTION 15403 (PROB C § 17200(b)(13))

TENTATIVE RULING: The Petition is GRANTED.

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Conservatorship of Rebecca Risch-Hendry

26-54504

REVIEW HEARING

APPEARANCE REQUIRED
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REVIEW HEARING

TENTATIVE RULING:

Based on the report of the court investigator, the Court determines by clear and convincing evidence that the conservatee cannot communicate, with or without reasonable accommodation, a desire to participate in the voting process, and therefore orders the conservatee disqualified from voting pursuant to Elections Code section 2208.

After a review of the matter, the Court finds the co-conservators are acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on January 9, 2020, at 8:30 a.m. in Dept. F. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

PROBATE CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 8:30 a.m.

In The Matter of The Scruggs Family Irrevocable Trust

17PR000190

ACCOUNTING

APPEARANCE REQUIRED

PETITION TO COMPEL TRUSTEE TO ACCOUNT

APPEARANCE REQUIRED

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Conservatorship of Philip Warren

17PR000217

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE ESTATE

APPEARANCE REQUIRED

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Estate of Geneva Alice Boles

17PR000249

PETITION FOR LETTERS OF ADMINISTRATION AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: GRANT Petition.

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REVIEW HEARING

APPEARANCE REQUIRED to discuss the change of residence of the conservatee.

**CIVIL LAW & MOTION CALENDAR – Hon. Mark Boessenecker, Dept. E
(Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.**

Brian R. Silver v. Steven G. Hasty, et al.

26-67005

PLAINTIFF'S MOTION FOR NEW TRIAL

TENTATIVE RULING:

Plaintiff Brian R. Silver's motion for a new trial under Code of Civil Procedure section 657(1) for irregularity in the proceedings (caused by the Court, the jury, and defendant Steven G. Hasty), improper orders of the Court, and abuse of discretion by the Court is DENIED. First, Silver argues the Court committed error when it denied his motion to change venue because the motion was verified and there was purported adverse publicity about Silver in a newspaper that prospective jurors may have seen. To the extent Silver is seeking a rehearing of the motion, it is untimely. As for the jury, Silver provides no evidence that the entire jury panel was infected by any outside information due to the primal characteristic of human nature of not being able to resist the fruit of the Tree of Knowledge. (Mem. at p. 3:15-16, 3:22-23.)

Second, Silver contends he should have been allowed to use a jury questionnaire during voir dire to ferret out any prospective jurors with bias against him, and to question prospective jurors privately. The four jurors who indicated they had prior knowledge of Silver were questioned outside the presence of the other potential jurors and eventually dismissed. Silver submits no evidence that any jurors succumb[ed] to curiosity by visiting social media or secretly investigat[ing] the publicity about him on the internet or otherwise acted improperly. (*Id.* at p. 4:14-16.) Silver cites no authority requiring the use of a questionnaire or to privately voir dire prospective jurors.

Third, Silver asserts the Court improperly denied him an opportunity to testify about his knowledge and understanding of easement rights and the history of the particular easement in question along with other numerous valid and relevant matters. (*Id.* at p. 5:25-28.) Silver raises no case law permitting expert testimony on legal issues. Nor has he introduced any transcript to show what testimony was disallowed. Silver does not explain what other numerous valid and relevant matters he is referencing.

Fourth, Silver maintains the jury rendered a verdict in less than 30 minutes, which is proof of a cursory deliberation. (*Id.* at p. 6:26.) Silver proffers no evidence that the deliberation period was cursory or that the jury violated the Court's instruction on how to deliberate.

Fifth, Silver avers the Court's refusal to recuse itself after three events serves as a basis for a new trial. Silver filed a Verified Statement of Disqualification of Judge. The judge assigned to rule on the matter, the Honorable Paul M. Haakenson from the Marin County Superior Court, found no basis for disqualification. The appellate court also denied Silver's writ of mandate on the issue. Thus, these events cannot serve as a basis for a new trial.

Silver's motion for a new trial under Code of Civil Procedure section 657(2) for misconduct of the jury is DENIED. Silver's unmeritorious position is based on the same contention as the fourth issue detailed above.

Silver's motion for a new trial under Code of Civil Procedure section 657(3)-(5) and (7) for accident or surprise, newly-discovered evidence, inadequate award of damages, and error in law occurring at the trial and objected to by the moving party is DENIED. Despite initially raising these grounds in his notice of intention to move for a new trial, Silver acknowledges the motion is not based on these grounds for relief. (*Id.* at p. 1:2-6.) No argument was developed on these grounds.

Silver's motion for a new trial under Code of Civil Procedure section 657(6) because the evidence was insufficient to justify the verdict and the verdict is contrary to law is DENIED. According to Silver, he obtained admissions from Hasty that he had "destroyed the air conditioners, and lied to the police that he did not know about it." (*Id.* at p. 8:2-4.) The jury instructions provided the elements Silver had to meet in order for the jury to find liability. Based on these elements, Hasty testified and explained his actions. Clearly, faced by the testimony and evidence presented, the jury could reasonably have believed, as evidently it did believe, that Silver did not meet all of the elements in order to recover damages. The Court is not convinced that the jury should have reached a different decision. A new trial would be inappropriate given the facts of this case.