

TENTATIVE RULINGS

FOR: January 12, 2021

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

Remote appearances via Zoom are mandatory to prevent the spread of COVID-19. Please use Zoom at the links listed below. COURTCALL IS NO LONGER AVAILABLE.

If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

Dept. A Zoom

Join by Video (Preferred)

<https://us02web.zoom.us/j/85897874559?pwd=Nk1VTnNQZmIzNXQwbVNiUk1iQTNCZz09>

Join by Phone: 877 853 5247 or 888 788 0099 **Meeting ID:** 858 9787 4559 **Password:** 704959

Dept. B Zoom

Join by Video (Preferred)

<https://us02web.zoom.us/j/89902611018?pwd=OXJRM2FFWHZ4YXJ4b2szZW51UFJYZz09>

Join by Phone: 877 853 5247 or 888 788 0099 **Meeting ID:** 899 0261 1018 **Password:** 776773

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. 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. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Conservatorship of William C. Whitt

17PR000135

SECOND ACCOUNT AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO CONSERVATOR OF THE PERSON AND ESTATE AND ATTORNEY FOR CONSERVATOR

TENTATIVE RULING: The accounting was filed without the requisite notice period. The matter is continued to January 29, 2021, at 8:30 a.m. in Dept. B. The clerk is directed to send notice to the parties, including Douglas Whitt.



Conservatorship of Harry Fried

17PR000233

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the Court finds the conservator is acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on January 12, 2023, at 8:30 a.m. in Dept. B. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

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Estate of John Lund

17PR000261

FIRST AND FINAL REPORT OF ADMINISTRATOR ON WAIVER OF ACCOUNT AND PETITION FOR ITS SETTLEMENT, FOR ALLOWANCE OF COMPENSATION TO ATTORNEYS FOR ORDINARY COMPENSATION, AND FOR FINAL DISTRIBUTION

TENTATIVE RULING: GRANT petition, including fees as prayed.

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Estate of Mary Jane Rossi

19PR000225

FIRST AND FINAL REPORT OF EXECUTOR AND PETITION FOR ITS SETTLEMENT ON WAIVER OF ACCOUNT, FOR ALLOWANCE OF COMPENSATION FOR ORDINARY SERVICES, AND FOR FINAL DISTRIBUTION

TENTATIVE RULING: The executor did not provide notice to the trustee of the trust, which is the sole beneficiary. The executor, however, serves as the trustee. Probate Code section 1201 provides that “[i]f a person is required to give notice, the person required to give the notice need not give the notice to himself or herself or to any other person who joins in the petition.” The executor does not need to give notice to himself. That much is clear from the statute. But the statute is ambiguous as to how it may apply to an executor who also serves as a trustee to a trust that is a sole beneficiary. On one hand, the provision could be interpreted as not requiring notice. On the other hand, the language could be interpreted to require notice, even if that trustee is the same person as the executor, as the trust is a separate entity than “the person required to give the notice.” Barring any objections or contrary authority, the Court will not require the executor to provide notice to himself as trustee under the circumstances as presented in the petition.

There is no waiver of an accounting from the trustee on behalf of the trust, but all beneficiaries of the trust have waived an accounting. The Court deems the requirement fulfilled.

The petition is GRANTED as prayed.

In Matter of the Botsch Family Trust

20PR000246

PETITION FOR ORDER TO COMPEL ACCOUNTING BY TRUSTEE; TO COMPEL TRUSTEE TO PROVIDE INFORMATION TO TRUST BENEFICIARIES; AND FOR DAMAGES FOR BREACH OF TRUST

TENTATIVE RULING: The petition is GRANTED.

Wells Fargo shall prepare and file an accounting of the trust that complies with the provisions of the Probate Code governing accountings for the period beginning December 28, 2008, to the present, and provide petitioners with the information and documents described in the petition at paragraph 28 within 60 calendar days of service of notice of entry of order.

Wells Fargo breached its duty of prudence in preparing the generation skipping transfer tax return and any excess tax shall not be recoverable from the beneficiaries of the trust by Wells Fargo. The amount of excess tax paid will be attributed to Wells Fargo as damages, in an amount to be determined after the information requested and any further discovery on the issue has been produced.

Wells Fargo breached its duty in preparing the final income tax return (Form 1041) and related Forms K-1 provided to petitioners. Wells Fargo shall pay damages for excess tax paid and increases in tax compliance costs, in an amount to be determined after the information requested and any further discovery on the issue has been produced.

The matter is scheduled for a status conference on April 13, 2021, at 8:30 a.m. in Dept. B.

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Conservatorship of Gayle E Nelson

20PR000253

AMENDED PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

APPEARANCE REQUIRED. The proposed conservatee need not attend as attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed conservatee. (Prob. Code, § 1825, subd. (c).)

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Conservatorship of Jacob Liam Kuchta

26-67851

REVIEW HEARING

TENTATIVE RULING: 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 12, 2023, at 8:30 a.m. in Dept. B. The court investigator

shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

**CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B
(Historic Courthouse) at 8:30 a.m.**

Olga Campbell v. California Department of Motor Vehicles

20CV001313

PETITION HEARING

TENTATIVE RULING: The Hearing on Petition purportedly noticed by Petitioner is taken off-calendar. If Petition elects to proceed then, following preparation and lodging of the administrative record, Petitioner is directed to proceed by either noticed motion or application for alternative writ. (See Cal. Admin Mandamus (3d ed. Cal. CEB) §11.1, p. 11-3.) The Court sets a case management conference for May 12, 2021, 8:30 a.m. in Dept. B.

The notice of motion does not provide notice of the Court’s tentative ruling system as required by Local Rule 2.9. Moving party/counsel is directed to contact the opposing party/ies forthwith and advise of Local Rule 2.9 and the Court’s tentative ruling procedure. Notwithstanding the procedures set forth in Local Rule 2.9, the moving party/counsel shall appear at the hearing, by Zoom, unless it is confirmed that no party requests oral argument.

There is no administrative record in the Court’s file, and Petitioner has otherwise failed to provide the Court with a copy of the agency decision she seeks to challenging.

“The procedures in section 1094.5 are the means for judicially reviewing final decisions of administrative agencies.” (*Elizabeth D. v. Zolin* (1993) 21 Cal.App.4th 347, 353.) “In a section 1094.5 proceeding, it is the responsibility of the petitioner to produce a sufficient record of the administrative proceedings; ‘ . . . otherwise the presumption of regularity will prevail, since the burden falls on the petitioner attacking the administrative decision to demonstrate to the trial court where the administrative proceedings were unfair, were in excess of jurisdiction, or showed ‘prejudicial abuse of discretion.’” [Citation.]” (*Id.* at 354; see also Code Civ. Proc. §1094.5, subd. (a), 1094.6, subd. (c).) “In the absence of an evidentiary record, sufficiency of the evidence is not an issue open to question. Rather, we must presume that the findings were supported by substantial evidence.” (*Ibid* quoting *Caveness v. State Personnel Bd.* (1980) 113 Cal.App.3d 617, 630.)

No evidence of any kind appears in the Court’s file. Again, there is no administrative record. There is no indication that an administrative record has been requested or is being prepared.

Moreover, the Court has not been provided with a copy of the agency’s decision, and it is unclear, from the Petition whether such decision has been made. Petitioner, “prays that this Court...[g]rant the petition and issue a peremptory writ of mandate directing the respondent agency to vacate its 11/10/20 order....” (Petition at 3.) However, the Petition alleges that at the

November 10, 2020 hearing, “the hearing officer...said that his ruling would issue shortly.” (Petition at 2.) The Petition then provides that, “[p]ursuant to that ruling, this Writ of Mandate was filed by the Petitioner through the undersigned.” Based on the foregoing, the Court is unable to determine what decision of the administrative agency the Petition seeks to have the Court review.

Through its opposition, Respondent acknowledges that “the Court cannot render a reasoned decision on the merits without first considering the administrative record and hearing transcript...” (Opposition at 3.) Respondent then “requests that the hearing be continued to allow Petitioner to submit the record.” (*Ibid.*) On January 8, 2021, Petition filed a purported notice of motion to continue the hearing.

The Court notes that Petitioner set the present hearing date. If there were any indication that Petitioner had requested preparation of the administrative record, or was otherwise diligently proceeding to have it prepared, then a continuance of the hearing date might be appropriate. However, where, as here, there is no indication that an administrative record is being prepared, especially in light of the failure to clearly identify, in the Petition, the decision being challenged, the Court finds no basis for continuing the hearing set by Petitioner. (See *Elizabeth D. v. Zolin*, *supra*, 21 Cal.App.4th at 354, *Caveness v. State Personnel Bd.*, *supra*, 113 Cal.App.3d at 630.)