

TENTATIVE RULINGS

FOR: February 28, 2019

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. 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. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Conservatorship of Corinne T. Rau

18PR000156

REVIEW OF BOND/TERMINATE CONSERVATORSHIP AS TO THE ESTATE

APPEARANCE REQUIRED

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Estate of William R. Schneider

18PR000202

PETITION FOR SETTLEMENT, FOR ALLOWANCE OF COMPENSATION TO ATTORNEYS FOR ORDINARY SERVICES AND FOR FINAL DISTRIBUTION UPON WAIVER OF ACCOUNTING

TENTATIVE RULING: GRANT petition, including fees as prayed.
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In the Matter of Dean and Arleen Phillips 2005 Revocable Trust

18PR000267

PETITION FOR ORDER COMPELING ACCOUNTING; SUSPENSION OR REMOVAL OF TRUSTEE; BREACH OF FIDUCIARY DUTY; AND FINANCIAL ELDER ABUSE

TENTATIVE RULING: In its January 16, 2019 Minute Order, the Court indicated the proof of service on file was not signed or dated. There still appears to be no proof of service showing that beneficiaries Leslie Carol Miller and Darrin David Phillips received notice of the underlying petition or hearing. As to these beneficiaries, there only is a proof of service of the errata regarding the lodgment of exhibits to the petition in the court file. The Court cannot reach the merits until all parties have been properly served with all applicable materials.

However, the trustee should begin preparing an accounting from July 2011 to the present because the Court is inclined to grant the request for an accounting. (See *Christie v. Kimball* (2012) 202 Cal.App.4th 1407, 1413 [court's inherent power over trusts includes power to sua sponte order trustee to account for trust assets].) The parties shall meet-and-confer to see if they can reach an agreement regarding the due date for the accounting and any other outstanding issues. The matter is continued to April 4, 2019, at 8:30 a.m. in Dept. A to allow for proper service or to file a proof of service on Miller and Phillips. The parties shall file a joint status report on or before March 28, 2019.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

In the Matter of Lorene Berlin Peterson

19CV000130

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.

PROBATE CALENDAR – Hon. Monique Langhorne, Dept. G (Criminal Courts Bldg.-1111 Third St.) at 8:30 a.m.

Conservatorship of Andres Torres-Medina

18PR000008

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 March 5, 2021, at 8:30 a.m. in Dept. A. 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 Eleanor Jane Nielsen

19PR000023

SECOND AMENDED PETITION FOR PROBATE OF WILL AND FOR LETTERS
TESTAMENTARY AND AUTHORIZATION TO ADMINISTER UNDER THE
INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: GRANT petition.

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Conservatorship of Brandon St. John

26-50799

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 February 26, 2021, 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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Conservatorship of Ivan Madrigal

26-57409

REVIEW HEARING

TENTATIVE RULING: The matter is continued to April 5, 2019, at 8:30 a.m. in Dept. B to allow the co-conservators to file the Determination of Conservatee's Appropriate Level of Care (Judicial Council form GC-355). This is the second continuance. The clerk is directed to send notice to the parties and to attorney Deborah Durr Ferras.

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Conservatorship of Ryan Blom

26-67466

SECOND ACCOUNT AND REPORT OF CO-CONSERVATORS

TENTATIVE RULING: The matter is continued to April 4, 2019, at 8:30 a.m. in Dept. A to allow the co-conservators to file an accounting. The clerk is directed to send notice to the parties.

**CIVIL CALENDAR – Hon. Monique Langhorne, Dept. G (Criminal Courts Bldg.-
1111 Third St.) at 8:30 a.m.**

Bank of America, N.A. v. Sherry L. Landon

18CV001383

MOTION FOR JUDGMENT ON THE PLEADINGS

TENTATIVE RULING: Plaintiff Bank of America, N.A.’s request for judicial notice of defendant Sherry L. Landon’s responses to request for admissions and form interrogatories is GRANTED. “[A] court may take judicial notice of a party’s admissions or concessions, but only in cases where the admission ‘can not reasonably be controverted,’ such as in answers to interrogatories or requests for admission, or in affidavits and declarations filed on the party’s behalf. [Citations.]” (See *Arce v. Kaiser Found. Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 485.) Here, Landon’s discovery responses are not subject to different interpretations as the responses admit the allegations supporting the complaint.

Plaintiff’s motion for judgment on the pleadings under Code of Civil Procedure section 438, subdivision (c)(1)(A), is GRANTED. (See *Evans v. California Trailer Ct., Inc.* (1994) 28 Cal.App.4th 540, 548 [“The grounds for a motion for judgment on the pleadings must appear on the face of the challenged complaint or be based on facts which the court may judicially notice.”].) Landon has admitted all the elements of plaintiff’s complaint via the discovery responses.

The Court notes plaintiff did not meet-and-confer prior to filing the motion as required under Code of Civil Procedure section 439.