TENTATIVE RULINGS

FOR: April 3, 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.

Estate of Deanna Lea Beatty **17PR000250**

PETITION FOR FINAL DISTRIBUTION ON WAIVER OF ACCOUNT

TENTATIVE RULING: GRANT petition, including fees as prayed. The clerk is directed to drop the hearing set for April 19, 2019, at 8:30 a.m. in Dept. A.

In the Matter of Christine Montelli 1990 Inter Vivos Trust **19PR000052**

PETITION FOR ORDER INSTRUCTING TRUSTEE TO HIRE PROFESSIONAL PROPERTY MANAGER

TENTATIVE RULING: Acting successor trustee Sharon Locy's petition for an order authorizing her to hire a professional property manager, pursuant to Probate Code section 17200, is GRANTED, on the condition that any such agreement be on a month-to-month basis pending the outcome of respondent's petition for removal scheduled for April 24, 2019.

Settlor Christine Montelli created the Christine Montelli 1990 Inter Vivos Trust (Trust) in 1990. Settlor served as initial trustee. Settlor died January 24, 2018. The Trust nominates petitioner to serve as successor trustee. The Trust assets include a 90% interest in and to real property located in St. Helena, California. Petitioner and respondent appear to be the only beneficiaries of the Trust.[1] The property is improved with four houses and a 15-unit apartment

[1] It appears that the remaining 10% of the real property is owned by petitioner, respondent, and the heirs of Catherine Peregoy, who predeceased settlor. It further appears that no probate of Ms. Peregoy's estate has yet been filed. One Natalia Peregoy has appeared in the present action by filing a Declaration that she is the sole surviving heir of "Cathy Peregoy," and that she considers herself to be "the eventual owner of a part of the trust property." The

complex. Petitioner and respondent each live in one of the houses. A third house, the previous home of the settlor, is vacant. The remaining house is rented to respondent's son, Tony Montelli. The apartment complex is occupied by renters.

A trustee is authorized to petition the court concerning the affairs of the trust. (Probate Code § 17200, subs. (a).) A trustee has the power to hire persons to assist the trustee in the performance of administrative duties. (Probate Code § 16247.)

The Court finds that the hiring of a professional property manager to assist trustee in managing the real property assets of the trust is reasonable and appropriate. However, any such agreement should be of limited duration as set forth above, in case the petition for removal of this trustee is successful. If the petition for removal is denied, the trustee may enter into a longer property management contract as appropriate.

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

Mary Doe v. Napa Valley Unified School Dist., et al. **16CV000234**

MOTION TO COMPEL PLAINTIFF'S ATTENDANCE AT MENTAL EXAM

TENTATIVE RULING: Defendants Napa Valley Unified School District and Carliza Bataller's motion to compel plaintiff Mary Doe's attendance at a medical examination to take place on April 28-29, 2019, at 9:00 a.m., and not exceed sixteen hours, is GRANTED. Plaintiff does not dispute that good cause exists for a mental exam. She instead objects to the requested sixteen-hour length of the exam. Specifically, plaintiff argues Dr. Sarah Hall's time estimate is not consistent with the completion time the product manufacturers proscribe, an effective examination does not require a full administration of all of Dr. Hall's proscribed exams, and a two-day sixteen-hour exam is overly burdensome and a misuse of the discovery process. The Court takes each contention in turn.

First, the product manufactures' proscribed time does not hold much weight as the manufacturers are not involved with the facts and circumstances in this case or with this plaintiff's alleged injuries. Plaintiff claims injuries for brain injury, post-traumatic stress disorder, depression, auditory and visual hallucinations, suicidal ideations, anxiety, severe headaches, sensitivity to loud noises, cognitive/concentration problems, difficulty with memory, and "isolation/anti-social." (Hall Decl., ¶ 6.) As Dr. Hall states, "the exact length of time required to complete the[ ] tests can vary a good deal between individuals," and "it is estimated that the tests . . . typically can be completed within twelve to sixteen hours." (*Id*., ¶ 9.) Dr. Hall continues: "Given that the majority of the tests that will be administered are untimed, there is a great deal of variability in the amount of time that each test can take. In addition, time to complete tests is often increased among individuals, such as this plaintiff, with complaints of anxiety, stress and depression, as well as problems with cognition, concentration and memory. It

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phrase "trust property" is ambiguous. However, it does not appear that Natalia Peregoy is thereby claiming to be a beneficiary of the Trust. Any such claim would be unsupported by the Trust. (See section 5.3.) Based on the foregoing, the Court interprets Natalia Peregoy's Declaration as claiming a right to a fractional ownership of the 10% interest of the real property that is outside of the Trust.

is extremely unlikely that all of Plaintiff's alleged injuries could be adequately assessed within a single day of testing. In addition, given Plaintiff's alleged emotional distress, it would be unwise to overly tax her by demanding that she complete all of the designated tests in a single day." (*Id*.) Although plaintiff's psychologist, Dr. Richard Perrillo, may disagree with Dr. Hall's assessment, his criticism is cursory when compared to Dr. Hall's detailed declaration. Thus, Dr. Hall has adequately explained why it will take twelve to sixteen hours to complete the exam.

Second, as defendants proffer, plaintiff has not shown that any of Dr. Hall's tests are redundant or unnecessary. Due to plaintiff's numerous emotional symptoms and disorders, it is necessary for plaintiff to undergo a broad range of neurocognitive, academic, and psychological testing designed to assess her functioning. (*Id*., ¶¶ 7-8.) The Court agrees that having plaintiff take the Personality Assessment Inventory-Adolescent (PAI-A) again would serve no purpose as Dr. Perrillo maintains. But it appears plaintiff has not shared the results with defendants or Dr. Hall. Although plaintiff now claims she may be amenable to sharing the results, as of this ruling, all that is before the Court is a possible future promise. Plaintiff has had adequate opportunity to produce the results, and without the immediate sharing of the results by April 5, defendants are entitled to conduct the PAI-A. If the results are shared, and if the test was fully completed and there are no ambiguities, plaintiff shall not take the PAI-A again. Otherwise, plaintiff shall take the PAI-A test.

Moreover, Dr. Perrillo states the PAI-A and MMPI-A tests are equivalent and redundant. Plaintiff does not address the fact that defendants need multiple personality tests to provide a "multi-method assessment" of plaintiff. (*Id*., ¶ 8.) Nor does Dr. Perrillo explain why the PAI-A and MMPI-A tests are redundant or equivalent. (Perrillo Decl., ¶ 11.) Plaintiff also takes issue in a footnote with the Rorschach Inkblot Test, based on Dr. Perrillo's declaration, because the test is only used by 2.1% of all neuropsychologists and its effectiveness in a forensic evaluation is questionable. Dr. Perrillo does not explain his 2.1% conclusion or why this test falls below the standard of care or is designed to mislead the trier of fact. (*Id*., ¶ 12.) By comparison, Dr. Hall explains the test can meaningfully assess plaintiff's allegations of post-traumatic stress disorder, depression, auditory and visual hallucinations, suicidal ideations, anxiety, and "isolation/anti-social." (Hall Supp. Decl., ¶ 7.)

Third, the two-day exam is not overly burdensome or a misuse of the discovery process. As noted, Dr. Hall's declaration adequately explains why it will take twelve to sixteen hours to complete the exam. The parties shall meet-and-confer as to whether the exam should take place over a weekend to ensure plaintiff does not miss school.

Finally, plaintiff objects to defendants' request to exclude the audio recording of the exam. The objection is well-taken. Defendants did not raise the issue in their notice of motion, and they did not provide any argument in their memorandum of points and authorities on the topic. They instead improperly waited until their reply to address the issue. Even if the issue was properly raised, the Discovery Act specifically authorizes recording mental exams. Both examiner and examinee have the *right* to record the entire examination by *audio* (but not video) technology. (Code Civ. Proc., 2032.530, subd. (a).) Defendants' request in their reply that Dr. Hall be allowed to review the recorded mental exam of Dr. Perrillo, if such exists, is not properly before the Court on this motion.

The Court does not believe defendants' call for a protective order is warranted.

PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Conservatorship of Michael Anthony Torres **17PR000191**

PETITION FOR APPOINTMENT OF PROBATE CO-CONSERVATOR OF THE PERSON AND ISSUANCE OF AMENDED LETTERS OF CONSERVATORSHIP

APPEARANCE REQUIRED. The conservatee need not appear.

In the Matter of the Fahey Family Living Trust **18PR000247**

PETITION TO COMPEL ACTIONS BY TRUSTEE; AND TO REMOVE TRUSTEE

APPEARANCE REQUIRED

In the Matter of Elsebeth Nellsen Schoenberger Trust **18PR000275**

AMENDED CONTEST OF A TRUST AND PETITION FOR: (1) DECLARATORY JUDGMENT; (2) TRUST ACCOUNTING; AND (3) TRUST INFORMATION

TENTATIVE RULING: Petitioner filed his amended verified petition on March 29, 2019, but there is no proof of service in the court file. As required in the February 20, 2019 Minute Order, petitioner was to file and serve the amended verified petition before the next hearing date or the petition would be dismissed. Because there is no proof of service on file, the Court would be within its discretion to dismiss the petition. However, the Court will afford petitioner one more opportunity. The matter is continued to May 17, 2019, at 8:30 a.m. in Dept. B to allow petitioner to serve and then file with the Court a proof of service of the amended verified petition.

Estate of Michael J. Cooper **19PR000061**

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

TENTATIVE RULING: If a proper proof of service is filed before or at the hearing, the petition will be granted. Otherwise, the petition will be denied without prejudice.

Although the caption does not request full authority to act under the IAEA, it is clear from the body of the petition and notice that petitioner seeks such authority. Box f(2) states decedent's will is dated "9/5/2000." However, the attached will is dated September 5, 2002.

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

Nancy L. Ryan v. Delta Consulting & Engineering of St. Helena, et al. 18CV000509

DEFENDANT BRUCE TUCKER CONTRUCTION, INC.'S MOTION FOR LEAVE TO FILE CROSS-COMPLAINT

TENTATIVE RULING: Defendant Bruce Tucker Construction Inc.'s motion for leave to file a cross-complaint is GRANTED. On December 14, 2018, defendant filed its answer to plaintiff Nancy L. Ryan's first amended complaint followed by the current motion on March 4, 2019. Based on this procedural history, plaintiff argues the motion is untimely. Ryan is correct that Code of Civil Procedure section 428.50, subdivision (a), sets out the time period for the filing of a permissive cross-complaint: "A party shall file a cross-complaint against any of the parties who filed the complaint or cross-complaint against him or her before or at the same time as the answer to the complaint or cross-complaint."

Ryan, however, fails to address subdivision (c) of the statute, which provides that a party may still seek leave of court to file any cross-complaint, and leave may be granted in the interest of justice at any time during the action. (Code Civ. Proc., § 428.50, subd. (c).) Defendant has sought such leave. Defendant explains it did not file a cross-complaint earlier because Ryan's verified discovery responses from February 6, 2019, confirmed the existence of a claim against Ryan. The discovery responses demonstrate the need to file a cross-complaint. It is in the interest of justice to permit the filing of the cross-complaint against Ryan, as well as the other Roe cross-defendants, because of the judicial policy of settling all disputes between the parties in the same lawsuit. The motion is not untimely.

As to Ryan's contentions that the claims are improper, she may elect to attack the pleadings after the cross-complaint is filed and after engaging in the meet-and-confer process.

Defendant shall file its cross-complaint within 5 calendar days.