

Monday, February 14, 2022

TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. NOTICE OF THE INTENTION TO APPEAR MUST ALSO BE GIVEN TO ALL OTHER PARTIES.

IF THE CLERK IS NOT NOTIFIED OF A PARTY'S INTENTION TO APPEAR, THERE WILL BE NO HEARING AND THE TENTATIVE RULING WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT'S RULING WILL BE PROVIDED.

18-CVC-10813

PIERSON, RAYMOND

VS.

RUSHING, PHYLISS

CIVIL MISCELLANEOUS MOTION - DEFENDANTS

TENTATIVE RULING:

Defendant Phyliss Rushing's Motion for Trial Preference for preference in trial setting under Code of Civil Procedure (CCP) §36(a) is GRANTED.

CCP §36(a) sets forth authority for granting a motion for preference for time of trial, as follows:

A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes both 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.

...

(f) Upon the granting of such a motion for preference, the court shall set the matter for trial not more than 120 days from that date and there shall be no continuance beyond 120 days from the granting of the motion for preference except for physical disability of a party or a party's attorney, or upon a showing of good cause stated in the record. Any continuance shall be for no more than 15 days and no more than one continuance for physical disability may be granted to any party.

In support of the request, counsel submits a declaration indicating that RUSHING is 1) 94 years of age, 2) has heart issues (stent inside a stent and a defective heart valve), 3) is a Defendant in this case, and 4) Plaintiff is seeking damages in excess of Defendant's policy limits. (Leonard Decl. ¶¶ 2, 4.)

Further, the incident in this case occurred over five (5) years ago and RUSHING is not part of Plaintiff's appeal. Plaintiff has met her burden under CCP §36(a).

At trial setting conference, the parties shall select mandatory settlement conference and trial dates with trial to commence within no more than 120 days from the date of this order, or no later than June 14, 2022.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

21-CVC-12114

JERGER, DANIEL

VS.

SHAWN KARAI DBA NEW YORK FAMILY FITNESS

CIVIL MISCELLANEOUS MOTION

TENTATIVE RULING:

Defendant's Motion for Sanctions, filed December 8, 2021, is continued to March 21, 2022 at 8:30 a.m. in Department 1.

Plaintiff's Motion to Compel Production of Documents, filed January 10, 2022, is continued to March 21, 2022 at 8:30 a.m. in Department 1.

Defendant's Motion for Terminating Sanctions, etc., filed January 13, 2022, is continued to March 21, 2022 at 8:30 a.m. in Department 1.

Plaintiff's Motion to file First Amended Complaint is DENIED without prejudice.

CRC 1.21(a) provides: "Whenever a document is required to be served on a party, the service must be made on the party's attorney if the party is represented." (Emphasis added.)

Plaintiff filed a proof of service on November 10, 2021 showing Defendant Shawn Karai, dba New York Family Fitness, was personally served with the motion on October 14, 2021. Defendant is represented by an attorney and the attorney must be served.

Plaintiff's Motion to Compel Responses to Plaintiff's Form Interrogatories, Set One and for Monetary Sanctions is DENIED.

Plaintiff propounded Form Interrogatories, Set One and caused them to be personally served on Defendant Shawn Karai, dba New York Family Fitness on August 27, 2021. (Jerger Decl. ¶ 2.) No responses to the interrogatories were received, so Plaintiff caused a Meet and Confer letter to be personally served on Defendant Karai on November 8, 2021. No responses were received.

Plaintiff seeks damages in the amount of \$435, the equivalent of three (3) hours of research to prepare the motion, "computed at the minimum hourly billing for a paralegal of \$125 per hour" plus the \$60 dollar filing fee. (Jerger Decl.)

Service:

CRC 1.21(a) provides: "Whenever a document is required to be served on a party, the service must be made on the party's attorney if the party is represented." (Emphasis added.)

Discovery requests must be served to the party's attorney of record.

Plaintiff filed a proof of service on January 10, 2022 showing Defendant Shawn Karai, personally, was served by mail with the motion on December 9, 2021. Defendant is represented by an attorney and the attorney must be served.

The court must hold self-represented litigants accountable to the same rules and procedures as an attorney. "When a litigant is appearing in propria persona, [he] is entitled to the same, but no greater, consideration than other litigants and attorneys. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney". (Burnete v. La Casa Dana Apartments (2007) 148 Cal.App.4th 1262 at 1267, citing County of Orange v. Smith (2005) 132 Cal.App.4th 1434, 1444.)

Defendant filed an opposition on January 21, 2022, indicating that counsel was not served with the form interrogatories, or the instant motion. Defendant requests sanctions pursuant to CCP 2020.30, for Plaintiff's misuse of the discovery process.

The court shall impose a monetary sanction against any party, person or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to sanction acted with substantial justification, or that other circumstances make the imposition of the sanction unjust. (CCP § 2030.290(c); 2031.320(b).)

Plaintiff sets forth no facts in his motion that he acted with substantial justification when he failed to serve counsel for Defendant with the form interrogatories or the instant motion in compliance with CRC 1.21(a).

Counsel submits a declaration in support of the request for sanctions. Counsel indicates an hourly billable rate of \$425 per hour and billable time of four point seven (2.5) hours in preparing the motion. Counsel's office manager spent an additional point six (.6) hours at \$75 per hour preparing and filing the motion which cost \$60, for a total of \$1,167.50. The amount sought is fair and reasonable, and the hourly rate of the attorney fees is reasonable. The court does not find that charging for the office manager's time is reasonable.

Accordingly, Plaintiff is ordered to pay Defendant \$1,122.50 in sanctions within thirty (30) days of the date of this ruling. Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

21-CVC-12262

ANDREAS, NICOLAS

VS.

SUPERIOR COURT OF THE STATE OF CALIFORNIA AMADOR C

LONG CAUSE HEARING FOR:

TENTATIVE RULING:

On the court's own motion Petitioner's Petition for Writ of Mandate is continued to February 28, 2022 at 8:30 a.m. in Department 1.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

21-CVC-12287

AMADOR COUNTY UNIFIED SCHOOL
DISTRICT A PUBLIC ENT

VS.

WAGES, JAYSON

CIVIL MISCELLANEOUS MOTION - DEFENDANTS

TENTATIVE RULING:

Respondent's Motion for Reconsideration is GRANTED.

California Code of Civil Procedure § 1008 governs motions for reconsideration. Subdivision (a) provides:

When an application for an order has been made to a judge, or to a court, and refused in whole or in part... any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown. CCP §1008(a) (emphasis added).

Respondent fails to cite CCP § 1008 in his motion. The motion was untimely, in that it failed to comply with local rule 4.03(D), and when provided a notice of non-compliance by the court, and given a second opportunity to correct the error, Respondent submitted an unsigned pleading failing to comply with CRC 7.103(a).

The "new or different state of facts and circumstances" presented by Respondent are that the court was not aware that the Respondent was not timely served with the Petition prior to the court granting the restraining order. Parties agree, and the proof(s) of service in the court file reflect that counsel was served, both electronically and by personal service on August 27, 2021, four (4) days prior to the hearing on August 31, 2021.

CCP § 527.8(m) requires "...the respondent shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the petitioner or on its own motion, shorten the time for service on the respondent."

Petitioner argues both counsel and Respondent had actual notice of the hearing and chose not to appear, constituting a waiver of appearance. However, when viewed in a light most favorable to the Respondent, even with the numerous procedural defects in the motion, the court finds the prejudice to Petitioner in granting the motion is minimal. The restraining order may remain in place pending the hearing. In contrast, denying the reconsideration request would be far more prejudicial to Respondent, who was not afforded the opportunity to appear and present evidence in his own defense.

The workplace violence restraining order after hearing filed September 21, 2021 shall remain in full force and effect pending further hearing.

Parties are ordered to appear remotely or in person to choose a date in which to set a hearing on the restraining order within twenty-one (21) days pursuant to CCP 527.8(h).

21-CVN-12279

CAYLOR, JEFFREY

VS.

CIVIL MISCELLANEOUS MOTION - PLAINTIFF

TENTATIVE RULING:

Petitioner's motion for reconsideration of the court's October 4, 2021 order dismissing the case is GRANTED.

The court shall set aside the dismissal. However, the court cannot grant Petitioner's name change until Petitioner has filed with the court the proof of publication.

Petitioner's Petition for Change of Name shall be continued to April 7, 2022 at 8:30 a.m. in Department 2.

If Petitioner files with the court a valid proof of publication prior to that date, the court will sign the Decree Changing Name lodged in the file and the hearing date shall be vacated.

If no proof of publication is filed, the court intends to dismiss the petition without prejudice on that date.

Petitioner is incarcerated at Mule Creek State Prison. As per Amador Local Rules of Court, rule 4.03, subdivision F, the tentative ruling procedures do not apply in any case in which a self-represented party in the custody of the California Department of Corrections and Rehabilitation. Petitioner may appear telephonically for hearing; orders will be made at time of hearing.