

AMADOR SUPERIOR COURT CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Civil Cases
8/24/2020

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.

Case Number	Primary Party / Attorney	Secondary Party / Attorney
19-CVC-11080	JUDSON, ERIC/ GRAZIANI, BRIAN	SALERNO, GIOVANNI/ SALENKO, BRUCE

TENTATIVE RULING:

Defendant's Motion to Dismiss Defendant Sutter Valley Hospitals is DENIED.

"Under this statutory scheme, the trial court has broad discretion in selecting the appropriate sanction, and we must uphold the trial court's determination absent an abuse of discretion. (Los Defensores, Inc. v. Gomez (2014) 223 Cal.App.4th 377, 390 (Los Defensores).) Thus, we will reverse the trial court only if it was arbitrary, capricious, or whimsical in the exercise of that discretion. (Ibid.) However, terminating sanctions are to be used sparingly because of the drastic effect of their application". (Lopez v. Watchtower Bible & Tract Society of New York, Inc. (2016) 246 Cal.App.4th 566, 604 (Lopez); see Newland v. Superior Court (1995) 40 Cal.App.4th 608, 613-616.)

"A decision to order terminating sanctions for discovery abuse should not be made lightly, but where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction." (Mileikowsky v. Tenet Healthsystem 128 Cal.App.4th 262)

Plaintiff's failure to comply with discovery requests does not appear willful, or to have prejudiced Defendant. Terminating sanctions are not appropriate at this time.

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.

TENTATIVE RULING:

Petitioner’s Motion for the Court to acknowledge that Respondents have been served in this action is DENIED.

Petitioner filed a Proof of Service on April 13, 2020 indicating service of the “Summons and Complaint” by mail and acknowledgment of receipt of service, signed by Petitioner. Service in this manner does not constitute proper service. The writ of mandate must be served in the same manner as a litigant would serve a civil Summons and Complaint. This affords Petitioner three options to serve: (1) By personal service; (2) by substituted service (CCP §415.20); (3) by mail and acknowledgment of receipt of service.

If Service is by mail with acknowledgment of receipt of service, a completed Notice and Acknowledgment of Receipt (CCP § 415.30) must be completed and filed with the court. Petitioner is ordered to serve respondents and file proper proofs of service. After service is complete, a hearing date on the writ of mandate will be set.

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 is incarcerated at MCSP. The parties are ordered to appear for hearing on the above tentative ruling. Petitioner is authorized to appear by telephone using the CourtCall system.

TENTATIVE RULING:

Petitioner’s Motion for the Court to acknowledge that Respondents have been served in this action is DENIED.

Petitioner filed a Proof of Service on June 10, 2020 indicating service of the “Summons and Complaint” by mail and acknowledgment of receipt of service. Service in this manner does not constitute proper service. The writ of mandate must be served in the same manner as a litigant would serve a civil Summons and Complaint. This affords Petitioner three options to serve: (1) By personal service; (2) by substituted service (CCP §415.20); (3) by mail and acknowledgment of receipt of service.

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