LASSEN SUPERIOR COURT
DEPARTMENT ONE
TENTATIVE RULINGS

June 28, 2010

Hon. F. Donald Sokol, Presiding

*** * ***

(NOTE TO COUNSEL AND PARTIES: The court provides tentative rulings on law and motion matters only for information to the parties in preparation for the hearing. The court does NOT issue tentative rulings pursuant to California Rule of Court 3.1308, and the procedure set out in that Rule does not apply.)

> **[Record Disclosures by Judge Sokol: Mr. Daniel Bruce is a court Guardianship/Conservatorship Investigator. Ms. Nina Dupont-Stone, M.A. is a court Mediator. Ms. Diane Tetreault, M.A. is a court Mediator. Mr. Jon Nakanishi is the court Family Law Facilitator.]**

8:00 CALENDAR

#FL50332
Adkins, Raymond v. Adkins, Kathy
Status Review Hearing

The criminal case against the Petitioner, CR027697 is charging felony vandalism and injury. On June 22, 2010 it was set for an early dispositional conference. The within case will be continued for one month to July 26, 2010 at 8:00 a.m. with temporary restraining orders remaining in place, in order that the outcome of the criminal case may be determined.

#FS45705
Raymond, Deanne v. Raymond, Donald
Motion re Order to Vacate Contempt

The Motion to Vacate a Judgment or Order must be made within 15 days of the date of mailing Notice of Entry of Judgment or within 180 days after the Entry of Judgment, whichever is earliest, pursuant to Code of Civil Procedure Section 663(a). The court found Respondent guilty of contempt on May 23, 2008. Therefore the Motion to Vacate is untimely. Also, the bankruptcy court did not

discharge the jail sentence imposed as punishment for the contempt. The discharge of Respondent-Citee's debts in his 2010 bankruptcy does not mean that he did not have the ability to pay in 2008, so the contempt finding stands.

California Code of Civil Procedure Section 1222 provides that the judgment and orders of the court made in cases of contempt are final and conclusive and this is another ground upon which Respondent's motion should be denied.

The Respondent will be remanded to serve the jail sentence imposed August 2, 2008 of 10 days in the Lassen County Adult Detention Facility. Further, the court will allow Petitioner reasonable attorney fees for defending the Motion for Order to Vacate in accordance with a Memorandum of Costs to be filed by Petitioner.

#25313
Powles, Tim v. Marmolejo, Katrina
Motion for Reconsideration of Order

Respondent's Motion for Reconsideration will be denied as untimely pursuant to Code of Civil Procedure Section 1008 which section provides that any party affected by an order may <u>within 10 days</u> after service upon the party of the written Notice of Entry of Order make application to the judge to reconsider the matter. The Findings and Order After Hearing in this case were mailed to Respondent on April 30, 2010 and Petitioner did not file her Motion for Reconsideration until 24 days later on May 24, 2010.

#FL49828
Montgomery, Steven v. Montgomery, Gay
Order to Show Cause re Modification of Visitation and Child Support

The parties will be referred to mediation to determine whether an agreement can be reached, to return to court at 4:00 p.m. If no agreement is reached the court will either accept the recommendation of mediation or set the matter for an evidentiary hearing.

#33697
Hilberg, Kelly v. Hilberg, Robert
Order to Show Cause re Contempt

The court will inform the Respondent of the charges against him and will appoint counsel to represent him. The matter will be continued to a date certain for arraignment and setting of an evidentiary hearing.

#DV50663

Apple, Milton v. Apple, Bonnie
Order to Show Cause re Custody, Visitation and Temporary Restraining Order

At the time of review no proof of service had been filed with the court. If no proper proof of service is filed by the date of the hearing the matter will be taken off calendar unless Respondent appears and waives the service defect in which case the parties will be referred to mediation on the domestic violence issue, to return to court at 4:00 p.m. If no agreement is reached the court will set an evidentiary hearing on the domestic violence issues.

#DV50674
Apple, Milton v. Apple, Bonnie
Order to Show Cause re Custody, Visitation and Temporary Restraining Order

At the time of review no proper proof of service had been filed. If no proper proof of service is filed by the date of the hearing the matter will be taken off calendar unless Respondent appears and waives service in which case the parties will be referred to mediation on the domestic violence issues only, to return to court at 4:00 p.m. If no agreement is reached the court will set the matter for an evidentiary hearing.

#DV50595
Pearsall, Veronica v. Pearsall, Doug
Order to Show Cause re Custody, Visitation and Temporary Restraining Order

At the time of review no proof of service of the Temporary Restraining Order had been filed. If no proper proof of service is filed by the time of the hearing the matter will be taken off calendar unless Respondent appears and waives the service defect in which case the parties will be referred to mediation on the domestic violence issues only, to return to court at 4:00 p.m. If no agreement is reached the court will set the matter for an evidentiary hearing.

#FL47811
Davis, William v. Allen, Amber
There are three matters in this file set for hearing as follows:

1. **Order to Show Cause re Modification of Custody and Visitation filed by Respondent**
2. **Order to Show Cause re Contempt Filed by Petitioner**
3. **Order to Show Cause re Modification of Custody filed by Petitioner**

The parties will be referred to mediation to determine whether an agreement can be reached on custody and visitation issues, to return to court at 4:00 p.m. If no

agreement is reached the court will either accept the mediator's recommendation or set the matter for an evidentiary hearing.

With respect to the Order to Show Cause re Contempt charged against Respondent the court will inform the Respondent of charges against her and if she is not represented by counsel the court the appoint counsel to represent her. The matter will be continued for an arraignment and setting of an evidentiary on the contempt issues.

#FL49134
Child, Wendy v. Child, Lance
Order to Show Cause re Modification of Custody and Visitation

The parties will be referred to mediation to determine whether an agreement can be reached, to return to court at 4:00 p.m. If no agreement is reached the court will either accept the mediator's recommendation or set the matter for an evidentiary hearing.

#FL50504
Lopez, Veronca v. Alvarez, J. Angel
Order to Show Cause re Custody and Visitation

The parties will be referred to mediation to determine whether an agreement can be reached, to return to court at 4:00 p.m. If no agreement is reached the court will either accept the mediator's recommendation or set the matter for an evidentiary hearing.

#FS45874
Lamberton, Cindy v. Lamberton, Daniel
Order to Show Cause re Modification of Custody, Visitation and Injunctive Order

The parties will be referred to mediation to determine whether an agreement can be reached, to return to court at 4:00 p.m. If no agreement is reached the court will either accept the mediator's recommendation or set the matter for an evidentiary hearing.

#FS50503
Lee, Robert v. Clemins, Jessica
There have been four matters set for hearing in this case today as follows:

1. **Order to Show Cause re Custody and Support filed by Petitioner on May 20, 2010**

2. **Order to Show Cause re Custody and Visitation filed by Respondent June 10, 2010**
3. **Request for Domestic Violence Restraining Order filed June 14, 2010 filed by Petitioner**
4. **Order to Show Cause re Modification of Custody and Support filed by Petitioner June 17, 2010**

At the time of review no proof of service for any of the above matters had been filed. If no proper proof of service of any of these matters is filed by the date of the hearing they will be taken off calendar unless both parties appear and waive service defects in which case they will be referred to mediation to determine whether an agreement can be reached, to return to court at 4:00 p.m. If there is no agreement the court will set the domestic violence matter only for an evidentiary hearing. After the domestic violence issues are determined along with the Family Code Section 3044 issues the parties will be referred back to mediation on the custody and visitation issues.

#46705
Hubbard, Jacen v. Hubbard, Lindsey
Motion for Change of Venue

The Motion of Respondent for Change of Venue to Sacramento County will be taken off calendar unless Petitioner Father Jacen Hubbard appears and waives the service defect because the proof of service of the motion does not disclose either the date or place of deposit in the mail or the address that was used. If Petitioner Father appears and waives the service defect the motion will be granted to change venue to Sacramento County because neither party or the child reside in Lassen County and both Respondent and the parties' child reside in Sacramento County.

1:30 CALENDAR

#43738
Anderson, Vicki v. Clyne, Larry
Appearance and Examination of Judgment Debtor

If Plaintiff appears she will be sworn so that Defendant's counsel can examine her with respect to her finances. The examination will occur in a separate room. The parties will be directed to return afterward to see if further orders are needed.

If Plaintiff fails to appear a Warrant will issue.

#49079
Edwards, Brian v. CDC
Demurrer and Motion to Strike

The Demurrer of Defendants to the 2nd Amended Complaint will be sustained without leave to amend upon the following grounds:

Although Plaintiff has alleged that he has exhausted all administrative remedies and completed the government claims process "Exhibit L" showing compliance, to which Plaintiff refers, is not attached. In fact there are no documents attached showing the completion of the administrative remedies process. Without respect to exhaustion of administrative remedies, however, all of the Causes of Action stated in the 2nd Amended Complaint are vague, ambiguous and uncertain and therefore the General Demurrer will be sustained as to all counts without leave to amend. The court has given Plaintiff three chances to amend his Complaint and he has been unable to do so. Plaintiff has therefore demonstrated that he cannot properly amend to state any cause of action. Finally, with respect to claims for exemplary or punitive damages no facts have been pled that could sustain such damages.

#50300
Miller, Charles v. CDC
Motion by Plaintiff for Court Order Directing Prison Officials to Produce Plaintiff at Hearing via Telephone
Demurrer to Complaint

The Demurrer will be sustained without leave to amend for the reason that Plaintiff failed to comply with the California Tort Claims Act in that he filed the within action a month and a half after the applicable statute of limitations had expired. The letter rejecting the claim is dated August 20, 2009 and in such rejection letter Plaintiff was advised that he had only six months from August 20, 2009 to file a court action on the claim. Defendant did not file the within action until April 7, 2010. Since Plaintiff cannot cure this defect the Demurrer will be sustained without leave to amend.

#P7334
Conservatorship Ringdahl, Dolores
Biennial Review and Accounting

The Report and Account appear in order and will be approved. The court will order the Conservator's commissions and County Counsel fees to be paid in that they are reasonable. The proposed Order appears in order and will be signed.

#P7844
Conservatorship of Fink, Dianna
Appointment of Conservator

At the time of review Robert K. Hill had not filed an amended Petition and therefore it is assumed Conservatee Diana Fink and Mr. Hill are in agreement with the Conservatorship by the Lassen Public Guardian. The Conservatorship shall continue as ordered on June 14, 2010. However, there appears to be a typographical error in the Order in that line 4 states Lillian Criswell whereas it should state the name of the Conservatee, Dianna Fink.

#P7477
Conservatorship of Trumbull, Ralph
Biennial Review and Accounting

The Report and Account appear in order and will be approved. The court will also order that Conservator's commissions and County Counsel fees are found to be reasonable and will be allowed. The proposed Order appears correct and will be executed by the court.

#P7856
Conservatorship of Matteucci, Dina
Appointment of Temporary Conservator

At the time of review the proposed Conservatee had not been served with a Citation. It was also noted that no Notice of Hearing has been filed and the investigator's report is not in the file. Therefore the matter will be continued for two weeks to July 12, 2010 at 1:30 p.m. to allow the Citation, Notice of Hearing and investigator's report to be filed. The Temporary Conservatorship shall continue until the next hearing.

#P7100
Conservatorship of Sweger, Sybil
Petition re Removal of Trustee, Account and Appointment of Successor

On April 27, 2009 the court ordered that since the Conservatee had been receiving Medi-Cal funds and the State has a lien against the estate of $131,924.75 the court ordered the balance of the estate to be paid to the State of California, since the lien exceeds the value of the estate. Further, counsel was ordered to submit an order closing the estate once payment had been made. The court will inquire why

an order closing the Conservatorship estate has not been submitted with proof of payment.

With respect to the removal of the Trustee although the petition states that a copy of the trust is attached to the petition as "Exhibit A", a copy is not attached. Further, the Petition for Removal of Trustee should have filed in a separate action from the Conservatorship and the Successor Trustee Rex Lutton served with a copy of the petition.

The court's order of April 27, 2009 directing closure of the Conservatorship estate after payment to the state should be complied with.

#P7708
Conservatorship of Carter, Alice
Final Accounting and Report of Conservator, Allowance of Attorney Fees and Costs, Terminate Conservatorship and Discharge of Surety

In reviewing the disbursements during the accounting period all appear appropriate with the exception of two payments to Conservator on August 15, 2009 for reimbursement of $211.95 and March 6 to Conservator for $72.47. There are also disbursements to Sunrise Senior Living on account which are not explained. A large payment of $15,300.00 was made on January 6, 2010 for an alleged three months' residency at Sunrise Senior Living but a specific amount for each month is not disclosed. Also, the outstanding debts totaling $519.93 at the end of the accounting period should be explained. Because of the foregoing discrepancies the court will continue the Final Account and Request for Discharge to July 27, 2010 at 1:30 p.m. in order for the court investigator's report to be filed as the court investigator had been directed by an order dated May 24, 2010 setting the matter for status review and directing the court investigator to file a report by July 27, 2010. The Petitioner should explain the foregoing discrepancies and submit invoices from Sunbridge during the accounting period so the disbursements can be verified.

#P7187
Conservatorship of Tackett, Elizabeth
Biennial Review

The court has received the confidential report of investigator and agrees with the recommendation that the Conservatorship should continue. The court approves the acts and transactions of Conservator and directs the clerk to notify parties of the next review hearing.

#P7853
Estate of Parker, Michael
Petition for Letters of Administration

The Petition for Probate in this case is uncertain in that no will is alleged to be in existence but Petitioner requests to be appointed Executor instead of a proper designation as Administrator. The petition also fails to address the issues of bond. Further no notice of administration of the estate has been filed nor has proof of publication as required by the Probate Code. The court will therefore continue this matter to August 9, 2010 at 1:30 p.m. to allow proper notice of the administration to be served, as well as proof of publication. Petitioner is further directed to properly amend her petition so that correct notice can be submitted with respect to her designation as representative.

4:00 CALENDAR

#44480
Edgar, Jimmy v. Cooper, Bridgett
Report of Mediator

At the time of review no report had been received from mediation with respect to whether the parties have reached an agreement. If no agreement has been reached the court will either accept the recommendation of mediation or set the matter for an evidentiary hearing.

#FL47925
Harrison, Cary v. Bond, Kandise
Report of Mediator re Custody and Visitation

Mediation has requested a continuance to July 19, 2010 and that will be granted.

top of page