

Tentative Rulings for February 1, 2023
Department 403

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(27)

Tentative Ruling

Re: **Kathleen Slatik v. Daniel Ashley**
Superior Court Case No. 19CECG04036/Lead Case

Hearing Date: February 1, 2023 (Dept. 403)

Motion: By Defendant Daniel Ashley for Terminating and Monetary Sanctions, or, in the Alternative, Issue and Monetary Sanctions

Tentative Ruling:

To deny, without prejudice.

If a timely request for oral argument is made, such argument will be heard in Department 501.

Explanation:

Code of Civil Procedure section 2023.010 defines "misuses of the discovery process" to include "failing to respond or submit to an authorized method of discovery" and "disobeying a court order to provide discovery." (Code Civ. Proc. § 2030.010, subds. (d) & (g).) Code of Civil Procedure section 2023.030 states, in relevant part:

To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process:

[¶] . . . [¶]

(c) The court may impose an evidence sanction by an order prohibiting any party engaging in the misuse of the discovery process from introducing designated matters in evidence.

(d) The court may impose a terminating sanction by one of the following orders:

[¶] . . . [¶]

(3) An order dismissing the action, or any part of the action, of that party.

This court ordered Kathleen Slatik ("Slatik") to serve responses and pay monetary sanctions within 10 days of its October 4, 2022 order granting Daniel Ashley's ("Ashley") motion to compel an initial response to Request for Production of Documents, set three. (Request for Judicial Notice, Ex. A.) Moving counsel states in his declaration that after issuance of the court's tentative ruling for October 4 hearing, he and opposing counsel

agreed the order would be complied with if “unadulterated” Venmo records were produced. (Whelan, Decl. ¶ 5.)

Ashley now moves for terminating, or, alternatively, evidentiary and monetary sanctions because only unsatisfactory Venmo records were ultimately obtained. (Whelan, Decl. ¶ 6 [“Ultimately, we received some records from Venmo directly”].) Unsatisfactory responses, however, are governed by a motion to compel further response. (Code Civ. Proc., § 2031.310; see also Weil & Brown, Cal. Practice Guide, Civil Procedure before Trial (The Rutter Group 2022) 8:1482 [“Where responses have been made but they are not satisfactory to the demanding party, the motion is to compel further responses”].) Furthermore, despite the motion’s characterization of the produced Venmo records as “obvious manipulations,” moving counsel’s declaration notes that “[a]bsent a computer, it is not readily apparent what is missing” (Whelan, Decl. ¶ 7.)

Courts generally follow a policy of imposing the least drastic sanction required to obtain discovery or enforce discovery orders because the imposition of terminating sanctions is a drastic consequence, one that should not lightly be imposed or requested. (*Ruvalcaba v. Government Employees Ins. Co.* (1990) 222 Cal.App.3d 1579, 1581; see also *Creed-21 v. City of Wildomar* (2017) 18 Cal.App.5th 690, 701 [discovery sanction should be appropriate to the dereliction]; *Diepenbrock v. Brown* (2012) 208 Cal.App.4th 743, 749 [sanctions improper where substantial justification shown].)

Sanctions are designed to further a legitimate purpose under the Discovery Act, i.e. to compel disclosure so that the party seeking the discovery can prepare its case and, secondarily, to compensate the requesting party for the expenses incurred in enforcing discovery. Sanctions should not constitute a “windfall” to the requesting party; i.e. the choice of sanctions should not give that party more than would have been obtained had the discovery been answered. (Weil & Brown, Cal. Practice Guide: Civil Procedure before Trial (The Rutter Group 2022) ¶ 8:2216.) “The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks but the court may not impose sanctions which are designed not to accomplish the objects of the discovery but to impose punishment.” (*Caryl Richards, Inc. v. Superior Court* (1961) 188 Cal.App.2d 300, 304.)

Here, considering that Ashley ultimately obtained the Venmo records (which counsel had agreed would constitute compliance with the court’s October 4 order), whether the records received are deficient to a degree to constitute sanctionable conduct is more suitable for determination as a motion to compel further response. Considering such relief has yet to be sought, imposing terminating or evidentiary sanctions without first satisfying intermediate determinations would not further the purposes of the Discovery Act.

In addition, the statutes asserted as the basis for relief in Ashley’s notice of motion fall within the scope of statutes invoking the court’s informal pretrial discovery conference rules. (See Superior Court of California, Fresno County, Local Rules, rule 2.1.17.) Such relief, however, was not sought. Finally, it is also noted that Ashley filed this motion just weeks after Slatic’s counsel withdrew from representation, and it does not appear that new counsel has substituted in.

Therefore, the motion is denied. To the extent the court must revisit this discovery dispute in other more appropriate contexts, the motion is denied, without prejudice.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: jyh for JS on 1/30/23
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: **Romero v. BNSF Railway Company, et al.**
Superior Court Case No. 21CECG00013

Hearing Date: February 1, 2023 (Dept. 403)

Motion: Application of John Benjamin "Ben" Bireley to Appear as
Counsel *Pro Hac Vice* on Behalf of Plaintiff Tony L. Romero

**If a timely request for oral argument is made, such argument will be heard in
Department 501.**

Tentative Ruling:

To grant. The applicant has satisfied the requirements of the California Rules of Court, Rule 9.40.

Explanation:

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: ijh for JS on 1/30/23.
(Judge's initials) (Date)