

**Dept. 1**

**Civil Law and Motion Tentative Rulings for Friday, April 26, 2024 at 8:30 a.m.**

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

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**1. CV65655**

**In re Kirk**

Hearing on: Continued Hearing on Petition for Declaratory Relief  
Moving Party: Petitioner  
Tentative Ruling: HEARING REQUIRED

Petitioner here is a U.S. citizen seeking to amend vital records and secure a declaration relating thereto. This is now the third hearing in this case, and still this Court is unconvinced that it has subject-matter jurisdiction over the vital records of non-parties, let alone the power to issue an order that Italy officials would be bound to honor. To complicate matters, petitioner’s counsel has just recently subbed out of the case, leaving petitioner to fend for himself.

In order to be a justiciable controversy over which this Court may have subject-matter jurisdiction, it must appear from the verified pleading that petitioner is entitled to “a declaration of his or her rights or duties with respect to another ... including a determination of any question of construction or validity arising” thereunder. CCP §1060. Petitioner here contends that he has a dispute with the Italian Consulate General regarding his application for Italian citizenship, and that he seeks an order “to resolve name discrepancies” of non-parties which was caused the Italian government confusion and which is allegedly “obstructing his right to claim dual Italian citizenship.” It further appears that for one or more of those individuals, there is also a discrepancy regarding date of birth. Nevertheless, Petitioner is asking this Court to effectively rewrite vital records belonging to non-parties so that Petitioner may take advantage of those rewrites and secure a personal benefit in his dispute involving a foreign government.

When properly framed, it should appear evident that – at the very least – the petition must be served upon those who may be real parties in interest herein, including but not limited to all seven individuals whose vital records are being challenged and the Italian Consulate General with whom Petitioner has a dispute. The court file includes no such proof. On that basis alone, the hearing must be continued to permit due process notice to those impacted by the relief Petitioner seeks herein.

Second, given that this trial court does not possess expertise in the manner in which the Italian Consulate General considers applications for dual citizenship via *jure sanguinis* (ie, ancestral bloodline), Petitioner must provide detailed briefing in the form of a memorandum of points and authorities, with all pertinent exhibits, demonstrating how any relief provided by this Court would resolve the aforementioned dispute. That brief must reference the rules and exceptions applicable to Italy’s *jure sanguinis* (naturalization

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pre-1912, descendent birth pre-1947, naturalization pre-1992, etc). Petitioner must also advise whether he has attempted to secure Certificato di Esatte Generalità from the Italian municipality before coming here to attempt the rare “one in the same” order from here. In other words, as part of the preliminary determination that this Court has subject-matter jurisdiction, petitioner needs to show how any relief provided in this Court would impact said dispute.

There is nothing new in the court file since the original hearing, despite an order for briefing on the aforementioned issues. If petitioner does not attend the hearing and make a clear proffer as to how the aforementioned concerns will be cured, this Court will have little option but to consider dismissal.

<b>2. CV65375</b>	<b>Packham v. Avalon Care Center</b>
Hearing on:	Motion to Withdraw
Moving Party:	Counsel for Plaintiffs
Tentative Ruling:	Denied without Prejudice

This is an elder abuse and wrongful death case in which the plaintiffs allege that defendants failed to properly treat decedent’s wound, resulting in toxic sepsis and infection. As alleged, neither plaintiff was related by law or blood to decedent (the operative pleading includes typos conflating decedent with one of the plaintiffs).

Before the Court this day is a motion by counsel for plaintiffs to withdraw from the representation. Counsel has already subbed out for co-plaintiff Richard Packham via substitution of attorney (MC-050) filed 02/20/24. Since no similar agreement was reached with co-plaintiff Marie Black, this motion was filed.

An attorney may withdraw as counsel of record if the client breaches the agreement to pay fees, insists on pursuing invalid claims or an illegal course of conduct, or when other conduct by the client renders it unreasonably difficult for the attorney to do his job, including when there is a breakdown in the attorney-client relationship. If the attorney does not have the client’s consent, he or she must proceed by way of noticed motion consistent with CCP §§ 284 and 1005, CRPC 1.16 and CRC 3.1362. The motion must be verified, must utilize the designated Judicial Council forms MC-051 – MC-053, and must set forth sufficient detail to permit a trial court to discharge its duty of inquiry regarding the grounds for the motion. See *Flake v. Neumiller & Beardslee* (2017) 9 Cal.App.5th 223, 230; *Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1134-1136; *Aceves v. Superior Court* (1996) 51 Cal.App.4th 584, 592-593.

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Courts have a duty of inquiry regarding the grounds for the motion, and are not required to accept at face value vague, unsupported or uncertain representations as to reasons why an attorney wants out. Counsel has a corresponding duty to respond and to describe the general nature of the issue, within the confines of any privilege. The degree of detail is on a sliding scale against counsel's candor and trustworthiness. The supporting declaration here provides no information at all. Although counsel mentions in passing an expectation of substituting out of the case at the last CMC, and that new attorneys may be subbing in, there is nothing contained in the MC-052 that would permit a favorable ruling on this motion. Moreover, there is no Proof of Service supporting the motion to withdraw (CRC 3.1362(d)(2)) and no proposed order (CRC 3.1362(e)). Without these, a new hearing will be required either way.

Motion denied without prejudice to re-filing if the second substitution cannot be secured.

<b>3. CV64938</b>	<b>Pine Mountain Lake Ass'n v/ Trakhter</b>
Hearing on:	Reserved ex parte application
Moving Party:	Plaintiff
Tentative Ruling:	N/A

Plaintiff has reserved a hearing date for an ex parte application but there are no papers on file for this Court's consideration.