

Tentative Rulings for Wednesday, November 16, 2016, for Department 8, Judge LaPorte presiding

Butakov v Hernandez Case No 16C 0166

Defendants' motion for summary judgment

No opposition has been filed. Proper notice of motion was given. Summary judgment is granted in favor of the defendants. The declarations and evidence presented in support of the motion shifted the burden to plaintiff. The failure of plaintiff to file opposition supports entry of judgment in favor of defendants.

Defendants' discovery motions and the OSC re sanctions

The defendants' discovery motions are moot, given the entry of judgment in favor of defendants, as a result of the summary judgment motion. The order to show cause why additional sanctions should not be imposed against plaintiff is also moot. The order to show cause is discharged.

Herrera v Juarez Case No. 16C 0201

Plaintiffs' counsel's motion to withdraw is granted. The order after hearing shall reflect the next court date in this case, which will be a case management conference set in court at the hearing on this motion. The order granting this motion to withdraw will be effective on the date the order after hearing is served on the last known addresses for plaintiffs.

Tentative ruling for Department 2, Judge Papadakis, visiting judge presiding

Milton v Kings County Personnel Appeals Board 16C0096

The new case authority cited by petitioner at oral argument on the demurrer is distinguishable. (*Unfair Fire Tax Committee v City of Oakland* (2006) 136 Cal.App.4th 1424, 1429-1430 [ordinance provided any affected or aggrieved thereby could request reconsideration by the same decision making body that adopted the resolution i.e. the city council. The ordinance did not describe a procedure for submission, evaluation and resolution and left unanswered the standard of review of the city council for reviewing its own resolution. It was not an administrative remedy needed to be exhausted before seeking redress in the courts].) By contrast, Personnel Rule 1060 provided for review by the Board of Supervisors, a different group of individuals from those that comprised the members of the Appeals Board. The time to seek review and the time of review were described in the rule. The right to be heard can be implied from the opportunity for an administrative appeal. (*Chavez v Civ Service Com* (1978) 86 Cal.App.3d 324, 332.) Review would be based on the record created by the Appeals Board.

The other arguments asserted in plaintiff's supplemental pleadings were previously argued and have already been addressed in the court's prior tentative ruling. The court reaffirms its prior tentative ruling.

There are no other tentative rulings. Consistent with California Rule of Court, rule 3.1308 (a)(2), no notice of intent to appear is required. If the non-prevailing party does not appear for hearing, the tentative ruling will become the order of the court. The prevailing party shall prepare an order for the court's signature.