Tentative Rulings for December 10, 2024 Department 502

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

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 above rule also applies to cases listed in this "must appear" section.

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24CECG01346	Michael Hamp v. Eric Bush—THIS MOTION WILL BE HEARD IN DEPT. 503
	ontinued the following cases. The deadlines for opposition and reply n the same as for the original hearing date.
24CECG01665	Cynthia Porraz v. Quality Group Homes, Inc. is continued to Thursday, December 12, 2024, at 3:30 p.m. in Department 502
(Tentative Rulings	begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(24)

<u>Tentative Ruling</u>

Re: In re: Ella Shayanfar

Superior Court Case No. 24CECG04946

Hearing Date: December 10, 2024 (Dept. 502)

Motion: Petition to Approve Compromise of Disputed Claims of Minor

If oral argument is timely requested, it will be entertained on Thursday, December 12, 2024, at 3:30 p.m. in Department 502.

Tentative Ruling:

To grant. The Order Approving Compromise, corrected by the court at Item 8, is signed. No appearances necessary.

The court sets a Case Status Minors Comp on Thursday, January 30, 2025, at 3:30 p.m. in Department 502, for confirmation that the annuity for the minor was issued on or before January 18, 2025, the deadline given in order to guarantee the amounts of the lump sum payments to the minor. If petitioner files evidence of funding the annuity at least five court days before the hearing, the status conference will come off calendar. Otherwise, an appearance by counsel will be required.

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.

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Issued By: _	KCK	on	12/09/24	
	(Judge's initials)		(Date)	

(46)

<u>Tentative Ruling</u>

Re: Linda Luu v. State Farm General Insurance Company

Superior Court Case No. 23CECG04046

Hearing Date: December 10, 2024 (Dept. 502)

Motion: Cross-Petition by Respondent/Cross-Petitioner State Farm

General Insurance Company to Disqualify Insureds' Appraiser

If oral argument is timely requested, it will be entertained on Thursday, December 12, 2024, at 3:30 p.m. in Department 502.

Tentative Ruling:

To deny.

Explanation:

"Appraisal hearings are a form of arbitration and are generally subject to the rules governing arbitration. Judicial review of an arbitration, or appraisal award, is circumscribed." (Kacha v. Allstate Ins. Co. (2006) 140 Cal.App.4th 1023, 1031.) It is not the court's role to review the merits of the controversy or to determine whether the evidence is sufficient to support the appraisal award. (Ibid.)

In bringing this cross-petition, respondent/cross-petitioner State Farm relies heavily on Mahnke v. Superior Court (2009) 180 Cal.App.4th 565, as precedent for the superior court hearing a petition to disqualify a party appointed appraiser. In Mahnke, the party-selected appraisers provided disclosure statements in compliance with section 1281.9 of the Arbitration Act. (Id. at p. 571.) Based on the disclosures provided, the insurer sought to disqualify the appraiser appointed by the insureds. (Ibid.) The trial court granted the petition, reasoning that section 1281.9, subdivision (e) requires party-selected appraisers, as well as the neutral umpire to make the specified disclosures based on Michael v. Aetna Life & Cas. Ins. Co. (2001) 88 Cal.App.4th. 925, 934-935. (Id. at p. 572.) However, shortly after the Michael decision was published the California Legislature revised section 1281.9 and amended subdivision (e) as relied upon by the trial court.

The version of subdivision (e) in effect at the time of the *Michael* decision stated: "An arbitrator shall disclose to all parties the existence of any grounds specified in Section 170.1 for disqualification of a judge; and, if any such ground exists, shall disqualify himself or herself upon demand of any party made before the conclusion of the arbitration proceeding. ..." (Former Code. Civ. Proc. § 1281.9, subd. (e), added by Stats. 1994, ch. 1202, § 1, amended by Stats. 1997, ch. 445, § 2, and repealed by Stats. 2001, ch. 362, § 5.) Section 1281.9, as amended, only imposes a disclosure obligation on the "proposed neutral arbitrator," rather than the more general "arbitrator." (*Mahnke*, *supra*, 180 Cal.App.4th at p. 577.)

With this revision, the court held that the disclosure requirements in section 1281.9 and the Judicial Council's Ethics Standards for Neutral Arbitrators do not apply to any arbitrator other than the jointly-selected or court-appointed proposed neutral arbitrator, or the competent disinterested umpire in an appraisal proceeding. (Mahnke, supra, 180 Cal. App.4th at p. 577.) This did not mean that a party-appointed arbitrator was not subject to disqualification. The test for disqualification based upon bias was whether a reasonable member of the public, aware of all the facts, would fairly entertain doubts regarding the arbitrator's impartiality. (Id. at p. 581.) In applying that test, the court found the Mahnke's party-appointed appraiser was not subject to disqualification. (Id. at p. 582.)

Although the opinion in Mahnke mentions the ability to challenge a party-selected appraiser in a footnote, it provides no guidance on the court's authority to do so. (See Mahnke, supra, 180 Cal.App.4th at p. 578, fn. 7 ["[A]ny challenge to a party-selected appraiser should be made at the first reasonable opportunity."].) Of note, the trial court in which the insurer petitioned for the disqualification of the Mahnke's party-appointed appraiser would have considered sections 1281.9 and 1281.91, setting out disclosure requirements for neutral arbitrators and the parties' rights to disqualify proposed neutral arbitrators, applicable to party-appointed appraisers. The holding in the Mahnke's petition for writ of mandate reversed this understanding. Moreover, the court declined to recognize an automatic and unlimited right of disqualification for disclosures made by the appraisers absent express statutory direction. (Id. at p. 578, emphasis added.)

Here, State Farm has provided no express statutory direction or other authority that would allow this court to disqualify a party-appointed appraiser. As such, it does not appear that the court has jurisdiction to consider the cross-petition to disqualify the Insureds' (cross-respondents Linda Luu and John Ngo) party-appointed appraiser. As a result, the cross-petition must be denied.

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 Ruli	ing		
Issued By:	KCK	on 12/09/24	
, <u> </u>	(Judge's initials)	(Date)	