

RYAN v. HUTCHINSON

19CV44070

MOTION TO SET ASIDE ORDER FOR “REMOVAL” OF COUNSEL

Plaintiff filed his Second Amended Motion For Order Substituting Successor-In-Interest to be heard on October 6, 2023. At the hearing on the motion for substitution, the Court also expedited the hearing on defendant’s counsel ‘s motion to be relieved as counsel (originally set for November 17, 2023) and granted the motion. The executor of defendant’s estate now seeks to set aside the Court’s Order relieving counsel from representation of defendant

Initially, the Court notes moving party failed to include the mandatory notice language of Local Rule 3.3.7 (adopted 1/1/18) which provides:

Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court’s website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court. Failure to include this language in the notice may be a basis for the Court to deny the motion.

Additionally, there is no citation to authority for the opposition to the counsel’s motion to withdraw, or for reconsideration of the court’s earlier ruling, and the Court has serious doubt’s if moving party has standing to object to the prior ruling. However, in the interests of justice and judicial economy, the Court will set aside these procedural shortcomings and rule on the merits of the motion..

The determination whether to grant or deny an attorney’s motion to withdraw as counsel of record lies within the sound discretion of the trial court, also considering whether such withdrawal might work an injustice in the handling of the case. (*Lempert v Superior Court* (2003) 112 Cal.App.4th 1161 [5 Cal.Rptr.3d 700; *In re Samuel A.* (2021) 69 Cal. App. 5th 67; *Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1133.)

Code of Civil Procedure §1008 authorizes a motion to reconsider a matter and modify, amend or revoke a prior order based upon new or different facts, circumstances, or law. A trial court's ruling on a motion for reconsideration is reviewed under the abuse of discretion standard. (*Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1457.) No new or different facts, circumstances, or law have been asserted in the motion.

This court in ruling on the request to be relieved as counsel, exercised its discretion and considered the motion to be relieved as counsel and the entirety of the file in its ruling. The Court finds no basis in the present motion to set aside the prior ruling. Based on the foregoing, the motion to set aside is DENIED.

The Clerk shall provide notice of this Ruling to the parties forthwith. Moving party to submit a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling.