



Home

Online Services

Pay Fines, Search Records...

Forms & Filings

Forms, Filing Fees...

Self-Help

Self-Rep, Info, FAQs...

Divisions

Civil, Criminal, Family...

Jury

Jury Duty Portal, Q&A...

General Info

Courthouses, ADA, Local Rules...

ONLINE SERVICES

## Tentative Rulings - Family Law

### DEPARTMENT 59 LAW AND MOTION RULINGS

Dept 59 uses this site not only for tentative rulings but also for emergent notifications to counsel about matters which concern the Court. If the submission does not say "Tentative Ruling" on the first page, it is not.

With respect to Tentative Rulings, they are not an invitation for counsel to rapidly file documents in response thereto prior to the hearing. Such documents will not be considered unless they have been filed pursuant to an Order issued after a properly noticed Ex Parte Application therefore.

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**Case Number:** BS167156   **Hearing Date:** July 31, 2017   **Dept:** 59

DEPT: 59

DATE: 7/31/17

CALENDAR #: 14

MATTER: MOTION FOR ATTORNEYS' FEES AND COSTS AGAINST PEITIONER PURSUANT TO WELFARE & INSTITUTIONS CODE 15657.03(t)

FILING DATE: 5/10/17

MOVING PARTY: Respondent, Trent Jackson

OTHER PARTY: Petitioner, Katherine Jackson

CASE NUMBER: BS167156

NOTICE: ok

TENTATIVE RULING: Grant by ordering Petitioner to pay \$44,765 to Ron Rale and \$19,200 to Philip Cohen.

REASONING:

1. Respondent is the prevailing party in this matter. Welfare and Institutions Code 15657.03 states, in pertinent part:

(s) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(Welfare & Institutions Code 15657.03(s).)

Although Petitioner requested a dismissal without prejudice, the court dismissed the action with prejudice. The case was dismissed after trial had already commenced without any stipulation to settlement. Respondent is clearly the prevailing party in this action.

2. The court uses its discretion under Welfare & Institutions Code 15657.03(s) to award court costs and attorney's fees to Respondent. Prevailing party fees and costs are discretionary under Section 15657.03(s), since the word, "may" is used, rather than "shall".

Here, Petitioner has failed to show any reason to deny such an award, and Respondent has shown such an award should be granted. According to the declaration of Respondent, Petitioner told Respondent during the last year that she received approximately \$67,000 each month during 2016 from the estate of her deceased son, Michael Jackson. Respondent, other the other hand, is presently unemployed, has no income and no money in the bank and has been

staying at various friends' homes since the end of January 2017. Respondent states that he initially retained Ron Role by giving him a \$7500 retainer, which was all of the money that he had available and he had to sell a motorcycle he owned to raise such funds. Respondent has not paid Mr. Role any fees since his initial retainer and he has not pay any fees to Mr. Cohen. Nor has Respondent paid the \$525 in costs that were advanced on his behalf.

Furthermore, Respondent would not have had to pay any attorneys' fees and costs at all had Petitioner never filed an elder abuse action or resolved this case after Respondent moved out of her home. Petitioner states:

2. I instructed my counsel of record to initial this proceeding . . . because [Respondent] refused to vacate my primary residence at the time in spite of multiple requests that he do so.

3. Subsequently, after a temporary restraining order was granted and I learned that [Respondent] had moved out [sic] my residence, I instructed my lawyers to dismiss this case because I had obtained the relief that I had sought.

(Declaration of Petitioner at page 1 lines 8-13.)

The TRO was obtained without notice to Respondent, who did not incur attorney's fees or costs until after the TRO was issued. Moreover, Respondent moved out of Petitioner's residence before Respondent's counsel attempted to resolve this case orally on 3/1/17 and in writing 3/9/17.

3. Respondent is awarded the amount of attorney fees and costs incurred.

Welfare and Institutions Code 15657.03(s) governs and states:

(s) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(Welfare & Institutions Code 15657.03(s).)

As demonstrated by Section 15657(a), the legislature knows how to use the word "reasonable", but it chose not to do so in Section 15657.03(a). Thus, the court is not restricted to determining reasonableness at all, and certainly not by a particular method.

Nevertheless, in exercising its discretion, the court may consider any and all relevant factors in making its award. An important factor is glaringly omitted from Petitioner's papers: the amount of attorney's fees and costs she incurred in

this action.

Petitioner was also represented by two counsel. In Respondent's case, it was reasonable to also retain a criminal attorney, given Petitioner's allegations that Respondent was taking money out of her accounts.

As demonstrated by the analysis under paragraph 2 above, Respondent's requests for discovery of Petitioner's finances was relevant to the issue of whether or not Respondent should be awarded prevailing party fees and costs. Had Petitioner entered into the stipulation re her ability to pay earlier, Respondent would have incurred less attorney's fees and costs.

Finally, both Mr. Rale and Mr. Cohen have attached detailed invoices to their declarations. (Exhibits A, B and D to motion and Exhibit E to supplemental declaration of Ron Rale.) The invoices appear reasonable, especially since Petitioner failed to share the amount she incurred for attorney's fees and costs in this matter. Therefore, the court grants the fees and costs requested, which are:

\$44,765 to Ron Rale (this includes the \$7500 retainer paid and costs of \$565) and

\$19,200 to Philip Cohen.

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