

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 7, Honorable Charles F. Adams Presiding**

T. Duarte, Courtroom Clerk  
191 North First Street, San Jose, CA95113  
Telephone: 408.882.2170

**To contest a tentative ruling, you must:**

1. Call (408) 808-6856 before 4:00 P.M. and leave a voicemail message containing the information described below, and
2. Notify the other side before 4:00 P.M. that you will appear at the hearing to contest the tentative ruling.

**In the voicemail message, please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested.**

**PLEASE NOTE:**

- If you do not notify the Court and/or opposing side as required by California Rule of Court, rule 3.1308(a)(1) and Probate Local Rule 2(A), the Court will not hear argument and the tentative ruling will be adopted *even if* all parties appear at the hearing.
- Sending an email to the department will not suffice to constitute notice to the Court of the need for a hearing regarding a tentative ruling.

**Court reporters are not provided.** Please consult our Court's website, [www.scscourt.org](http://www.scscourt.org), for the rules, policies, and required forms for appointment by stipulation of privately-retained court reporters.

- **Parties can appear either in person or remotely.** All remote appearances must be made through UDC, unless otherwise arranged with the Court. Please go to <https://santaclara.courts.ca.gov/online-services/remote-hearings> to find the appropriate link. Also, please note that that you must register in advance to appear remotely.
- As a reminder, state and local Court Rules prohibit recording of court proceedings without a Court order. This prohibition applies while in the courtroom and while appearing remotely.

**PROBATE TENTATIVE RULINGS FOR:**

**DATE: MARCH 4, 2026                      TIME: 10:00 A.M.**

**PREVAILING PARTY SHALL PREPARE THE ORDER**

**UNLESS OTHERWISE STATED (SEE [RULE OF COURT 3.1312](#))**

<b>LINE #</b>	<b>CASE #</b>	<b>CASE TITLE</b>	<b>RULING</b>
<a href="#">LINE 1</a>	24PR197239	Herrera Family Trust dated July 21, 2008	Hearing on Order to Show Cause. Parties must appear.
<a href="#">LINE 2</a>			
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## Calendar Line 1

**Case Name:** *The Declaration of Trust of Gerald M. Ley and Dollie S. Ley, dated 5/3/1991*  
**Case No.:** 24PR196871

### INTRODUCTION

Petitioner Marilyn Ley Hawke seeks removal of co-trustee Laurel Ley Wright from the Declaration of Trust of Gerald M. Ley and Dollie S. Ley (“the Trust”) dated May 3, 1991, as amended. Gerald<sup>1</sup> and Dollie established the Trust on May 3, 1991, and subsequently amended it six times. (First Amended Petition [“FAP”] at ¶ 2.) Gerald died on August 5, 2003, and Dollie died November 6, 2023, leaving daughters, Marilyn and Laurel as co-trustees. (*Id.* at ¶¶ 3, 5.) The Trust was reformed by a court order on May 30, 2024. (*Id.* at ¶ 6.) The Charters Avenue property was sold for \$4,200,000 on August 30, 2024. (*Id.* at ¶ 9.)

Petitioner alleges Respondent used trust funds totaling \$44,069.07 for personal expenses in Florida and Arkansas, including veterinary bills, pharmacy costs, pet supplies, storage units, and dog food services. (FAP at ¶ 11.) Petitioner made repeated requests to cease using trust funds for Respondent’s personal expenses as early as March 18, 2024. (*Id.* at ¶ 12.) However, Petitioner alleges Respondent refused to stop using the BMO checking accounts and Dollie’s Nordstrom credit card for her personal expenses, even after Dollie’s death. (*Ibid.*) Petitioner closed the BMO accounts on November 1, 2024 and transferred funds to a RBC account requiring dual signatures. (FAP at ¶ 13.) The outstanding trust expenses total \$130,704.50 plus penalties and late fees that Petitioner alleges the Trust is unnecessarily incurring. (*Id.* at ¶ 14.)

Petitioner further alleges Christopher McCarthy, the only grandchild, is entitled to \$100,000 per the Fourth Amendment to the Trust. (FAP at ¶ 18.) However, Respondent demands a \$27,250 offset without documentation. (*Id.* at ¶¶ 18, 19.) Respondent has blocked partial distributions of \$1,000,000 to each remainder beneficiary despite previous agreements. (*Id.* at ¶ 21.) Petitioner seeks court authorization to make this distribution plus 10 percent interest on Christopher McCarthy’s bequest from November 6, 2024. (*Id.* at ¶ 23.)

Petitioner alleges Respondent changed the locks on storage unit A018 containing her personal property and consolidated items from three storage units, making identification impossible. (FAP at ¶¶ 34-38.) Petitioner alleges Respondent took their father’s diamond ring and mother’s pearl ring without authorization. (*Id.* at ¶ 31.) The 2006 Mercedes E350 remains at Petitioner’s residence since September 2023 with \$3,283.11 in costs for maintenance, which Respondent refuses to do. (*Id.* at ¶¶ 26, 27.) Petitioner also alleges Respondent delayed the sale of the Saratoga condo by waiting five days to respond to an offer and making unreasonable demands. (*Id.* at ¶¶ 16, 17.)

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<sup>1</sup> The court will refer to the parties and other individuals by first name for the sake of clarity. No disrespect is intended.

Petitioner also alleges Respondent has engaged in harassing behavior by sending her over 1,200 e-mails between July 2022 and May 2025. (FAP at ¶ 40.) Respondent at one point sent 31 e-mails over the course of nine days. (*Ibid.*) Petitioner alleges Respondent has made threats, defamatory statements, unannounced visits, and physical intimidation. (FAP at ¶ 42.)

Petitioner seeks removal of Respondent based on multiple grounds including Probate Code sections 15642(1) and (e) to remove a co-trustee for breach of trust or suspend the powers of the trustee to prevent loss or injury, 15742(3) lack of cooperation between co-trustee which impairs administration of the trust, 16420(5) removes the co-trustee for breach of trust for co-trustee using funds for co-trustee own use, 16420(7) to deny compensation of the co-trustee resulting from the breach of trust, 16441(a) to charge co-trustee for interest in loss of trust estate resulting from the breach of trust, 17200(6) to instruct the trustee, and 17200(10) removing a co-trustee. (FAP at ¶ 1.)

The parties engaged in a 15.5-hour mediation on June 18, 2025, but were unsuccessful in resolving the issues indicated above. (FAP at 2:11.) In connection thereafter, Petitioner filed a Status Report on October 15, 2025. A Status Conference was held on October 21, 2025. However, Respondent failed to appear. The Court issued an Order to Show Cause directing Respondent to explain the failure to appear. An Order to Show Cause hearing was set for November 21, 2025.

On November 12, 2025, Respondent filed a Motion to Strike the Status Report filed on October 16, 2025. Petitioner filed her Opposition on February 13, 2026. Respondent filed her Reply on February 20, 2026.

## **DISCUSSION**

Respondent moves to strike the following from Petitioner's Status Report: (1) mediation communications improperly disclosed on page 2, lines 7-26, including a detailed list of mediation issues; (2) a false statement on page 4, line 1 claiming "Originally, Laurel was not designated as a beneficiary or trustee of the Trust"; (3) misleading statements on page 3, line 25 regarding Exemption Trust authority with an incorrect trust date; (4) characterizations of the Ex Parte Petition as current and operative without acknowledging intervening stipulation and mediation framework; (5) inflammatory accusations regarding Respondent's October 15, 2025 communications omitting material scheduling context; (6) materially false statements about representation status, mediation duration, trust execution date, and irrevocability date; and (7) argumentative characterizations and embedded requests for substantive relief inappropriate for status reports. (Motion to Strike at pp. 7:1-11:2.)

First, and perhaps most importantly, the court comments that a Status Report is generally not evidence used to prove or disprove an argument or allegation, and this court does not consider any such report as evidence. The court understands that parties have differing views of issues and can place appropriate weight, or no weight at all, on representations made in a non-evidentiary filing. In other words, statements made in a filing like a Status Report are generally not taken for their truth in any subsequent evidentiary hearing or trial.

Second, Evidence Code section 1119 establishes the general rule of confidentiality for communications, negotiations, and settlement discussions made during mediation. Here, the Status Report outlines the issues that were discussed at mediation without divulging any specific statements or factual assertions that were made therewith. (Declaration of Laurel Ley Wright, Exhibit C.) Indeed, these same issues are also presented in the operative First Amended Petition filed on October 28, 2025. Accordingly, the court finds that no violation of Evidence Code section 1119 has occurred here.

Third, and in any event, Code of Civil Procedure sections 435 and 436<sup>2</sup> do not provide a legal basis to strike the Status Report. Section 436 provides that a court may strike out any irrelevant, false, or improper matter asserted in a pleading. (§ 436, subd. (a).) Also, a court may strike out all or any part of a “pleading” not drawn or filed in conformity with the laws of the State of California. (§ 436, subd. (b).) The grounds for a motion to strike must appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (§ 437, subd. (a).)

As noted, sections 435 and 436 only apply to “pleadings” and not to other administrative filings such as a status report. Code of Civil Procedure section 435 defines a “pleading” as a complaint, cross-complaint, demurrer, or answer. (§ 435, subd. (a)(2).) Section 420 of the Code of Civil Procedure defines pleadings as “the formal allegations by the parties of their respective claims and defenses, for the judgment of the court.” (§ 420.) Section 422.10 lists the type of pleadings allowed in civil actions: “complaints, demurrers, answers, and cross-complaints.” None of these definitions include a status report. Accordingly, the court must conclude that the Status Report at issue here does not meet the definition of a “pleading” for relief under section 436.

Fourth, the cases cited by Respondent are inapposite. The family law case of *In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507 (*Davenport*), makes no mention of Code of Civil Procedure sections 435 and 436. (Opposition at p. 3:9-24.) Rather, this case at most discusses the trial court’s discretion in conducting its own proceedings. (*Id.* at p. 1526 [“Stated another way, a trial court is presumed to ignore material it knows is incompetent, irrelevant, or inadmissible.”].) Likewise, the California Supreme Court in *Foxgate Homeowners Assn., Inc. v. Bramalea California, Inc.* (2001) 26 Cal.4th 1, makes no mention of Code of Civil Procedure sections 435 and 436 and instead concerns the confidentiality of mediation. (*Id.* at p. 4:1-14.)

For her part, Petitioner seeks attorney’s fees and sanctions pursuant to Code of Civil Procedure section 128.5, which provides “[a] trial court may order a party, the party’s attorney, or both to pay the reasonable expenses, including attorney’s fees incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay.” (§ 128.5, subd. (a).) (Opposition at pp. 4:15-5:4.) However, “[a] motion for sanctions under this section shall be made separately from other motions or requests and

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<sup>2</sup> All further undesignated statutory references are to the Code of Civil Procedure.

shall describe the specific alleged action or tactic, made in bad faith, that is frivolous or solely intended to cause unnecessary delay.” (§ 128.5, subd. (f)(1)(A).) Here, the request for sanctions was raised in an opposition and not by way of a separate motion. Therefore, the court is statutorily prohibited from considering the request at this juncture.

In sum, the court finds that the motion provides no legal basis to strike the Status Report, particularly where, as emphasized in *Davenport*, the court can ignore material that is irrelevant or unhelpful to the resolution of any contested matters. (See *Davenport, supra*, 194 Cal.App.4th at p. 1526.) Thus, the motion must be denied.

### **CONCLUSION**

The Motion to Strike the Status Report is DENIED.

The court will prepare the order.

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**Calendar Line 3**

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