

Department 5 Civil L&M Notes for Wednesday, October 8, 2025

All law & motion matters set for hearing in Department 5 have been assigned by order of the Presiding Judge to be heard and decided by the Commissioner serving as a Judge Pro Tem. Parties retain the right under Cal. Const. art VI §21 to decline consent to the Commissioner serving as a Judge Pro Tem for law & motion matters by filing timely declination thereto. By participating in the first such hearing, or electing not to attend after due notice thereof, parties will be deemed to have stipulated to the Commissioner serving as a Judge Pro Tem for all law and motion matters in the case. See CRC 2.816. Civil L&M Notes are not tentative rulings. See CRC 3.1308(b). Parties and counsel are still expected to appear for the hearings unless the Note specifies otherwise. For those cases in which stipulations are confirmed, tentative rulings will be provided for future hearings. All appearances may be via Zoom using this link: <https://tuolumne-courts-ca.gov.zoomgov.com/j/1615813960?pwd=NTRMT0NwMDg5cmlYdzZ6VnBXWWFsUT09>.

8:30 a.m.

1 Konigsreiter et al v. Pacific Gas & Electric et al (CV64659)

Hearing on: a) Motion to Require Clerk's Transcript in Lieu of Appendix

This is a personal injury and property damage case, involving unusual facts. As previously noted, the general gist is this:

Co-plaintiff Daniel Myers ("Myers") serves as a personal assistant for co-plaintiff Adolf Konigsreiter ("Konigsreiter"). On 07/14/20, Myers called Nate's Tree Service ("Nate's") to schedule tree trimming services at a residence in Soulsbyville. Myers recalled that Nate's agreed to perform the service on 07/16/20 (when Myers would be present), but for reasons unknown Nate's actually arrived on 07/15/20. Only Konigsreiter was home, and he let the tree trimmers in through a locked gate. According to Myers, the "surprise" of this early visit, coupled with some confused "verbal abuse" by the tree trimmers, caused Konigsreiter to "forget to turn off a silent engine heater under [his vintage W7] tractor which ignited diesel fuel drippings" causing an explosion and fire.

On 09/15/2023, this Court issued a ruling sustaining a demurrer to all causes of action directed at co-defendant PG&E (failure to state), all causes of action asserted by co-plaintiff Daniel Myers (no standing), and the causes of action for breach of contract and intentional tort. What remained of the case were claims by Konigsreiter for negligence and wrongful cutting of trees against Nate's Tree Service. These remaining causes of action would more that cover the harm allegedly caused by the work performed at plaintiff's residence.

For reasons not immediately apparent, it took four months for PG&E to convert its complete victory via demurrer into a judgment. Within sixty (60) days thereafter, plaintiffs commenced their appeal. In so doing, they designated use of an appendix under CRC 8.124. Respondent PG&E apparently objected to the use of an appendix, concerned about plaintiffs' historical failure to maintain a faithfully accurate record of court filings. That objection was never presented to this Court.

Initially, this Court notes that a timing issue exists. Once appellants gave notice of their intention to proceed via appendix, a motion challenging that option must be filed within 10 days. CRC 8.124(a)(1). Appellants served notice of their intention to proceed via appendix on

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03/16/2024, and the first time this Court received an objection was 08/20/2025. Some discussion will be required to ameliorate this issue.

Beyond the timing concern, the factual basis for the objection – *appellants cannot be trusted to assemble an accurate record for the Court of Appeal to consider* – is easily addressed with built-in Rule of Court safeguards:

1. when a party elects to proceed via appendix, the trial court clerk must immediately provide all sides with a copy of the register of actions (8.124(a)(2));
2. when the appellant elects to proceed via appendix, the respondent can elect to prepare their very own (competing) appendix (8.124(a)(3)) which “may contain any document that could have been included in the appellant's appendix” (8.124(b)(5));
3. by electing to proceed via appendix, appellants are deemed to have made a sanctionable representation as to the accuracy and honesty thereof (8.124(g)); see *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 877; *Termo Co. v. Luther* (2008) 169 Cal.App.4th 394, 404; *Perez v. Grajales* (2008) 169 Cal.App.4th 580, 592.

It seems to this Court that appellants are taking more of a chance proceeding via appendix, and that this ought to be embraced by respondents, not challenged. However, assuming the parties stipulate, this Court will entertain argument and consider the matter on the merits.