

Tentative Rulings
December 11, 2024
Department S-17
Judge Joseph Ortiz

Tentative Rulings for Department S-17 are posted on the court's website (<https://www.sb-court.org/divisions/civil/civil-tentative-rulings>) at 3:00 p.m. or at 7:00 p.m. the court day before the hearing. If no tentative ruling is posted at 3:00 p.m., please check again after 7:00 p.m.

If you do not wish to submit on a tentative ruling, you must appear for the hearing either in person, via CourtCall (888-882-6878 or www.courtcall.com), or by ZOOM. Failure to appear is deemed a waiver of oral argument. If all parties submit on a tentative ruling, it will become the ruling of the court. The tentative ruling may note particular issues on which the court requests the parties to provide further argument at the hearing. If so directed, attendance at the hearing is mandatory. The party prevailing on a motion or other hearing shall serve written notice of the court's ruling unless all parties waive notice of the ruling.

ATTENTION: Since January 9, 2023, the Court no longer provides an official Court Reporter to transcribe proceedings in this Department. Parties who wish to have an official record of the proceedings in addition to a minute order must retain a private Certified Shorthand Reporter for the hearing and must submit a "Stipulation and Order to Use Certified Shorthand Reporter." Please contact the department if you would like a copy of this form. If counsel are appearing for the hearing remotely, the Stipulation can be emailed to the Judicial Assistant for Department S-17 at jgarcez@sb-court.org. The Court will sign the Order appointing the Certified Shorthand Reporter as the official Court Reporter Pro Tempore. Parties who do not retain a Certified Shorthand Reporter to be designated as an official Court Reporter Pro Tempore are deemed to have waived an official Court Reporter for the proceeding.

UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.

14. *Alvarez v. Vibra Healthcare, LLC, et al*, Case No. CIVSB2317415
Defendants Vibra, Vibra Hospital, MRN & Wilson’s Motion for Protective Order
12/11/24, 9:00 a.m., Dept. S-17

Tentative Ruling

The Court would **GRANT**, in part.

Defendants Vibra and Vibra Hospital are ordered to respond to Plaintiff’s Requests for Admissions, Sets One, and Form Interrogatories, Sets Two, by January 2, 2025 (approximately twenty days following this ruling).

Defendants MRN and Wilson are ordered to respond to Plaintiff’s Requests for Admissions, Sets One, and Form Interrogatories, Sets Two, within thirty days.

Case Summary

This is a medical malpractice negligence case. Plaintiff began rehabilitation treatment following a traffic collision. That collision occurred on June 19, 2022. In the course of her treatment, medical staff permitted her to fall out of bed, which allegedly resulted in her paralysis from the neck down. (Compl., ¶¶9-22.) As such, she filed suit against Defendants on July 28, 2023, alleging a single cause for medical negligence.

Plaintiff alleges that Ballard Rehabilitation Hospital (Ballard), Vibra LLC (Vibra), Vibra Hospital of San Bernardino (Vibra Hospital), and Does 1 through 50 were health providers that have done business as a rehabilitation hospital located in San Bernardino, California; Plaintiff labels these defendants collectively as “Ballard Entities.” Plaintiff alleges that Defendants Martinez, Garcia, and Does 51 through 100 were providers who were self-employed or employed by the Ballard Entities as nurses, physicians, or other medical staff who were involved in Plaintiff’s care and treatment. Plaintiff made multiple Doe amendments, naming ESP Personnel as Doe 1; Medical Referral Network dba ESP Personnel (MRN) as Doe 2; Readylink, Inc. as Doe 3; Jacquelyn Garcia as Doe 51; and Tamika Wilson, CAN, as Doe 52.

Relevant here, while Vibra, Vibra Hospital, MRN, and Wilson were all initially represented by the same law firm, the Court granted a motion to be relieved as counsel as to MRN and Wilson On October 31, 2024. Further, MRN and Wilson have both now had new attorney substituted in as of early December 2024.

Summary of the Law

A party or deponent may move for a protective order before, after, or during a deposition. (Code Civ. Proc., § 2025.420(a).) If issued, the issued protective order may include several different directives, including the deposition not be taken at all or that the scope of the deposition be limited. (Code Civ. Proc., § 2025.420(b).) If the motion is denied, then the court

may order that the responding party provide or permit the discovery against which protection was sought on terms and conditions that are just. (Code Civ. Proc., § 2025.420(g).)

Analysis

Here, moving parties explain that counsel Vibra and Vibra Hospital initially also represented MRN and Wilson. However, on July 25, 2024, a conflict arose when MRN alleged the Vibra Defendants were obligated to indemnify it and its employees from negligence allegations, which the Vibra Defendants dispute. Plaintiff’s counsel was quickly notified when this conflict emerged, and counsel for the Vibra Defendants filed motions to be relieved as counsel for MRN and Wilson by August 14, 2024. Despite these articulated concerns, two days later on August 16, 2024, Plaintiff’s counsel served Requests for Admissions, Sets One (RFA1s), and Form Interrogatories, Sets Two (FROG2s), on all Defendants.

Thus, movants argue that their then-counsel (pending the motion to be relieved) was placed in the untenable position of being required to take conflicting positions for its various clients. Plaintiff offered only an extension of time for MRN and Wilson to respond as a potential remedy. This motion followed.

Plaintiff does not dispute that a conflict existed among the four Defendants, but she contends the motion for protective order is moot and should be denied because on November 8, 2024, the court granted Defendants’ counsel’s motion to be relieved as counsel for MRN and Wilson. (Shapiro Decl., ¶10, Exhs. 5 & 6.) As such, she argues, there is no longer a conflict of interest. Plaintiff asks the court to order the Vibra Defendants to respond within 10 days and to order MRN and Wilson to respond in 30 days. The Vibra Defendants request 30 days, given the scope of the discovery.

The Court understands the concerns articulated by the Vibra Defendants. However, it notes that – pursuant to their own declaration – counsel for the Vibra Defendants was apprised that MRN and Wilson had other counsel as early as August 2, 2024. (Stokes Decl., ¶14.) However, the Court is also cognizant that a cautious counsel would refrain from even preliminary work while awaiting the formal substitution, which finally occurred early in December of 2024. The Court is also aware that winter holidays also likely impact counsel’s ability to timely respond. It would, therefore, require responses by January 2, 2025 (approximately twenty days following this ruling).
