

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

**Department 1, Honorable Le Jacqueline Duong, Presiding**  
Mai Jansson, Courtroom Clerk

191 North First Street, San Jose, CA 95113  
Telephone 408.882-2120

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

**PROBATE LAW AND MOTION TENTATIVE RULINGS**

**DATE: July 31, 2024      TIME: 10:00 A.M.**

**\*\*\*NOTICE\*\*\***

**APPEARANCES IN DEPT. 1 MAY BE IN PERSON OR  
REMOTE THROUGH MICROSOFT TEAMS**

**PLEASE GO TO:**

**[https://www.sccscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml) to find the appropriate link.**

**State and local Court Rules prohibit recording of court proceedings without a Court order. This prohibition applies while on Microsoft Teams.**

**Prevailing party shall prepare the order by e-file, unless stated otherwise below**

**The court does not provide official court reporters for civil/probate law and motion hearings. See court website for policy and forms for court reporters at hearing**

**TROUBLESHOOTING TENTATIVE RULINGS**

If do not see this week's tentative rulings, they have either not yet been posted or your web browser cache (temporary internet files) is accessing a prior week's rulings. "REFRESH" or "QUIT" your browser and reopen it, or adjust your internet settings to see only the current version of the web page. Your browser will otherwise access old information from old cookies even after the current week's rulings have been posted.

LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	23PR194132	Estate of Weiwei Hsieh	Click on <a href="#">LINE 1</a> or scroll down for attached Tentative Ruling.
<a href="#">LINE 2</a>			Click on <a href="#">LINE 2</a> or scroll down for attached Tentative Ruling.
<a href="#">LINE 3</a>			Click on <a href="#">LINE 3</a> or scroll down for attached Tentative Ruling.
<a href="#">LINE 4</a>			

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<a href="#">LINE 6</a>			

Line 1

## INTRODUCTION

Petitioner Andrey Jivsov (“Petitioner”) initiated this case by filing a petition to probate a purported will of Decedent’s. According to that petition, Petitioner is the father of Decedent Weiwei Hsieh’s (“Decedent”) daughter Fiona Jivsov (“Fiona”). Respondent HW Spencer Hsieh (“Respondent”), Decedent’s former husband, filed a petition for revocation of probate of will, to suspend and remove Petitioner as executor of Decedent’s estate and trustee of her trust, to determine interference with expected inheritance, and alleging claims for return of estate property, wrongful taking of estate property, conversion, elder abuse, fraud, misappropriation of estate property, breach of fiduciary duty, and constructive trust. Petitioner has opposed Respondent’s petition.

On April 17, 2024, the court appointed, sua sponte, a guardian ad litem for Fiona over Petitioner’s objection. On May 13, 2024, it issued its written order finding that Fiona is a minor and that her interests would be inadequately represented in the absence of a guardian ad litem.

Currently before the court is Petitioner’s motion to reconsider the appointment of the guardian ad litem for Fiona. The motion is unopposed.

## DISCUSSION

### I. Preliminary Issues

#### A. Procedural Violation: Lack of a Memorandum of Points and Authorities

“A party filing a motion, except for a motion listed in rule 3.1114, must serve and file a supporting memorandum. The court may construe the absence of a memorandum as an admission that the motion or special demurrer is not meritorious and cause for its denial and, in the case of a demurrer, as a waiver of all grounds not supported.” (Rules of Court, rule 3.1113(a).) “The memorandum must contain a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced.” (Rules of Court, rule 3.1113(b).)

Here, Petitioner has not provided a memorandum of points and authorities. This is sufficient cause to deny the motion. The court will nonetheless address the merits of the motion but Petitioner is admonished to comply with the Rules of Court as to all future filings.

## II. Timeliness

Section 1008, subdivision (a) requires that the motion for reconsideration be filed within 10 days of service of the offending order. (*Wilson v. Sci. Applications Internat. Corp.* (1997) 52 Cal.App.4th 1025, 1032, fn. 3 [“10-day period begins running when the moving party has been served with the order”].) Here, the written was served via mail on May 13, 2024. The motion was filed on May 28, 2024.

Service of the order was complete on May 13, 2024, (see § 1013, subd. (a) [stating “[s]ervice is complete at the time of the deposit”]), but “any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of the document, which time period or date is prescribed by statute or rule of court, shall be extended...10 calendar days if... the place of address is outside the State of California but within the United States....” (Code Civ. Proc. § 1013, subd. (a).) Here, the order was served on Petitioner in Nevada. Thus, the time to file the motion was extended 10 days and motion is timely.

## III. Legal Background

“Section 1008, subdivision (a) requires that a motion for reconsideration be based on new or different facts, circumstances, or law. A party seeking reconsideration also must provide a satisfactory explanation for the failure to produce the evidence at an earlier time. [Citation.]” (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212.) “The burden under section 1008 is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial. [Citation.]” (*Id.* at pp. 212-213.)

Thus, a motion to reconsider was properly granted where supported by newly-produced documents which had been requested but not produced at the time of the earlier hearing. (*Hollister v. Benzl* (1999) 71 Cal.App.4th 582, 585.) “New circumstances” were shown by evidence the court failed to consider a timely-filed memorandum of points and authorities in its prior ruling. (*Johnston v. Corrigan* (2005) 127 Cal.App.4th 553, 556.)

## IV. Merits of the Instant Motion

Petitioner argues that the court should not have determined that Fiona’s interests were not being adequately represented in the proceedings in the absence of appointment of a guardian ad litem. The main thrust of his argument is that he is adequately representing Fiona’s interests. After the court appointed the guardian ad litem, on April 25, 2024, Petitioner filed his own declaration and Fiona’s declaration in opposition to the appointment of the guardian ad litem. The court has considered

these declarations in addition to Petitioner's declaration in support of the motion for reconsideration filed May 23, 2024.

In his declaration in support of the motion for reconsideration, Petitioner points out that the court did not give the required notice of its intent to appoint a guardian ad litem for Fiona. In the context of a discretionary appointing under of a guardian ad litem under section 372, the Court of Appeal explained in *J.N. v. Superior Court* (2007) 156 Cal.App.4th 523, 535,

The juvenile court has discretion to appoint a guardian ad litem for a minor. (Code Civ. Proc., § 372.) The guardian ad litem is appointed merely to aid the court and enable it to protect the minor's rights by making decisions in the minor's best interests. (*Williams v. Superior Court* (2007) 147 Cal.App.4th 36, 49.) Due process is satisfied when the court provides the parent with an informal hearing and an opportunity to be heard on the issue. (*In re Sara D.* (2001) 87 Cal.App.4th 661, 671 [guardian ad litem properly appointed for a parent who was deemed mentally incompetent to participate in proceedings].) At the informal hearing, the parent must be given the opportunity to respond, and there must be an explanation of the guardian ad litem's purpose and what authority will be transferred to that person. (*In re Enrique G.* (2006) 140 Cal.App.4th 676, 684.)

At the hearing when the court appointed the guardian ad litem, in an effort to protect the interests of the minor, the court appointed the guardian ad litem over Petitioner's objection without advance notice. At that time, the court had not yet been provided with the declarations of Petitioner and Fiona in opposition to the appointment and, therefore, had not considered them.

The court will hold a hearing on whether to appoint a guardian ad litem for Fiona. The court will hear from both Petitioner and Fiona's guardian ad litem as to whether Fiona's interests are adequately protected in this litigation without the appointment of the guardian ad litem. Pending the outcome of the hearing, the order appointing the guardian ad litem will remain in effect.

## CONCLUSION

The motion for reconsideration is GRANTED. The court will hold a hearing on whether to appoint a guardian ad litem for Fiona. The court will hear from both Petitioner and Fiona's guardian ad litem as to whether Fiona's interests are adequately protected in this litigation without appointment of the guardian ad litem. Pending the outcome of the hearing, the order appointing the guardian ad litem will remain in effect. The parties are ordered to appear at the hearing on this matter to schedule the hearing date and any necessary briefing schedule.

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