

April 3, 2026, Civil L&M Tentative Rulings (Judge Kent Kellegrew)

1. CU0001723 UMPQUA BANK, as Successor by Merger to Columbia State Bank, an Oregon State Chartered Bank vs. Joseph A. Miller, DMD, Inc., a California Corporation et al

On the Court’s own motion, this hearing is continued to April 23, 2026, at 10:00 a.m. in Department 5.

Receiver’s motion for service by alternate means is denied without prejudice.

“The requirements of notice and a hearing apply to a contempt proceeding, and have been characterized as “jurisdictional.”” *Albrecht v. Superior Court* (1982) 132 Cal.App.3d 612, 618.

In a contempt proceeding, “[t]he order to show cause acts as a summons to appear in court on a certain day and, as its name suggests, to show cause why a certain thing should not be done. [Citation.] Unless the citee has concealed himself from the court, he must be personally served with the affidavit and the order to show cause; *otherwise, the court lacks jurisdiction to proceed.* ([Code Civ. Proc.,] § 1015 [in civil actions in which a party is represented by an attorney, ‘the service of papers, when required, must be upon the attorney instead of the party, except service of subpoenas, of writs, and other process issued in the suit, and of papers to bring him into contempt’]; see also [Code Civ. Proc.,] § 1016; *Arthur v. Superior Court* [(1965) 62 Cal.2d 404,] 408....)

Cedars-Sinai Imaging Medical Group v. Superior Court (2000) 83 Cal.App.4th 1281, 1286-1287.

The rule requiring personal service on the citee “is not based on a statutory requirement of personal service of the affidavit, however, for no statute specifically regulates its service. Rather, it is a judicially created rule, believed necessary because the order to show cause is an original pleading in a quasi-criminal action. Courts have, therefore, fashioned certain exceptions to that rule without having to confront the problem of legislative regulation of the field.” *In re Abrams* (1980) 108 Cal.App.3d 685, 691. Compliance with the rule requiring personal service on cite “is excused only after a party has alleged taking steps “reasonably calculated” to apprise the contemnor of the action.” *Albrecht, supra*, at 619. “Real party must use such means “as one desirous of actually informing the absentee might reasonably adopt to accomplish it.”” *Id.* at 620.

If real party's attempts to serve and notify petitioner prove fruitless, real party should prepare an affidavit or declaration stating with some specificity attempts made and their results. This will provide the trial court with an adequate basis to determine the propriety of allowing substituted service on petitioner's counsel as an act of its continuing jurisdiction. As we have held, in light of the constitutional command and

potential grave consequences of the contempt proceeding, such a showing is compelled. If the court finds sufficient basis, it may then issue a new order to show cause and direct service on counsel. Thus, real party is not without a remedy.

Ibid.

The record in the instant case discloses the following efforts the Receiver has made to apprise Defendant of the contempt action: (1) Receiver's counsel sent Defendant's counsel two emails asking Defendant's counsel to accept service of the Order because he and his client are already parties to the case, Rothschild Decl., ¶¶ 3-4; (2) Receiver's counsel sent a copy of the order to Defendant at his residence via USPS which was labeled "return to sender" and received back in counsel's office, Rothschild Decl., ¶¶ 5-6; (3) the Receiver hired a license process server who made four attempts at personal service on Defendant at his residence between November 26, 2025 and December 15, 2025. Rothschild Decl., ¶ 7, Ex. D.

Receiver has failed to demonstrate what efforts it has taken to engage in a thorough, systematic investigation and inquiry in order to learn of other potential locations to serve Defendant, only stating it has a "lack of information regarding Dr. Miller's last known address or current workplace". Mot., 4:4-6 For example, absent from the application is any information showing Receiver's attempts to ascertain other potential addresses for Defendant. *Watts v. Crawford* (1995) 10 Cal.4th 743, 749, fn. 5 (generally discussion regarding sufficiency of "honest attempts" to learn Defendant's whereabouts).

The Court additionally notes the motion states "the process server could not gain entry, and the people present refused to come out to be served." Mot., 2:4-5. However, this represents the process server's declaration, in which he avers "no individuals were seen", "no contact was made during this attempt," "no movement...could be observed." Casillas Decl, ¶¶ 1-4. Thus, there is also no information or evidence presented in the application to show why substitute service under section 415.20 could not be effected at the address. For these reasons, Receiver has failed to demonstrate the necessary "quantum of diligence as would justify resort to service by publication." *Donel, Inc. v. Badalian* (1978) 87 Cal.App.3d 327, 333.

Therefore, based on the above, Receiver's application for service by alternative means is denied. Receiver may file an additional request in the future if desired. Any future request should include declaration(s) from individual(s) with first-hand knowledge who describe, in detail, what efforts have been made to effect service on Defendant. On future motion, if the Court finds sufficient basis, it will be inclined to issue a new order to show cause and direct service on Defendant's counsel.