

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 09/24/15

DEPT. 74

HONORABLE Teresa Sanchez-Gordon

JUDGE S. SMYTHE

DEPUTY CLERK

HONORABLE  
3

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

M. TAVAKOLI, C/A

Deputy Sheriff

NONE

Reporter

9:00 am BC574246

DARCI S. ISOM  
VS.  
MISCHELYNN SCARLATELLI, ET AL.

Plaintiff DARCI S. ISOM  
Counsel (via CourtCall;  
appears without counsel)  
Defendant DAGRELLA LAW FIRM  
Counsel BY: JERRY R. DAGRELLA

**NATURE OF PROCEEDINGS:**

**ALSO APPEARING:**

BOCHNEWICH LAW OFFICES  
BY: PETER M. BOCHNEWICH  
(for interested parties Cameron Isom and Victoria Isom, heirs-at-law)

MOTION OF DEFENDANT MISCHELYNN SCARLATELLI, INDIVIDUALLY AND AS BENEFICIARY OF THE ISOM FAMILY TRUST DATED DECEMBER 28, 2004, AND AS SUCCESSOR TRUSTEE AND BENEFICIARY OF THE ISOM FAMILY TRUST DATED OCTOBER 10, 2013, FOR SANCTIONS AGAINST PLAINTIFF DARCI S. ISOM AND HER ATTORNEY, RANDY C. WHALEY, AND THE WHALEY LAW FIRM, PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 128.7;

CASE MANAGEMENT CONFERENCE;  
(C.f. 7-17-15)

PLAINTIFF'S ORAL MOTION FOR LEAVE TO AMEND THE COMPLAINT;  
(set per order of 7-17-15)

The motion of defendant Mischelynn Scarlatelli, individually and as beneficiary of the Isom Family Trust dated December 28, 2004, and as successor Trustee and beneficiary of the Isom Family Trust date October 13, 2013, for sanctions against plaintiff Darci S. Isom and her attorney, Randy C. Whaley and The Whaley

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M. TAVAKOLI, C/A	Deputy Sheriff	NONE	Reporter

9:00 am	BC574246		Plaintiff DARCI S. ISOM, Counsel (via CourtCall; appears without counsel)
	DARCI S. ISOM		Defendant DAGRELLA LAW FIRM
	VS.		Counsel BY: JERRY R. DAGRELLA
	MISCHELYNN SCARLATELLI, ET AL.		

**NATURE OF PROCEEDINGS:**

Law Firm, pursuant to Code of Civil Procedure Section 128.7, is called for hearing.

The court renders her tentative as to the motion for sanctions, the matter is argued, and the motion is granted, as follows:

"(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further

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Reporter

9:00 am

BC574246

Plaintiff

DARCI S. ISOM,  
(via CourtCall;  
appears without counsel)

Counsel

DARCI S. ISOM

Defendant

DAGRELLA LAW FIRM

VS.

Counsel

BY: JERRY R. DAGRELLA

MISCHELYNN SCARLATELLI, ET AL.

**NATURE OF PROCEEDINGS:**

investigation or discovery.

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.

(1) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or any other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

If warranted, the court may award to the party

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9:00 am BC574246

DARCI S. ISOM  
VS.  
MISCHELYNN SCARLATELLI, ET AL.

Plaintiff Counsel DARCI S. ISOM,  
(via CourtCall;  
appears without counsel)  
Defendant Counsel DAGRELLA LAW FIRM  
BY: JERRY R. DAGRELLA

**NATURE OF PROCEEDINGS:**

prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(2) On its own motion, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b), unless, within 21 days of service of the order to show cause, the challenged paper, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected.

(d) A sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (1) and (2), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on a motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(1) Monetary sanctions may not be awarded against a represented party for a violation of paragraph (2)



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9:00 am	BC574246  DARCI S. ISOM VS. MISCHELYNN SCARLATELLI, ET AL.	Plaintiff Counsel  Defendant Counsel	DARCI S. ISOM, (via CourtCall; appears without counsel) DAGRELLA LAW FIRM BY: JERRY R. DAGRELLA
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**NATURE OF PROCEEDINGS:**

of subdivision (b).

(2) Monetary sanctions may not be awarded on the court's motion unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned." (Code Civ. Proc., § 128.7).

"A violation of any of the conditions of Section 128.7(b) (which includes (1) improper purpose, (2) frivolous claims, defenses or contentions, (3) lack of evidentiary support or likely support and (4) lack of evidentiary support or reasonable bases on lack of information as to denials), may support an award of sanctions. [Eichenbaum v. Alon (2003) 106 Cal.App.4th 967, 976].

Defendant has established that the claims were filed for an improper purpose and lack evidentiary support. There is more than ample evidence that Troy Isom was in full possession of his faculties at the time he made his estate planning decisions, that defendant was not involved in the estate planning decisions, that Troy Isom was physically able, that Troy Isom never displayed any signs of abuse or mental deterioration, and that plaintiff lacked personal knowledge of her father's condition or relationship with defendant and felt she was entitled to a significant portion of Troy Isom's estate.

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**NATURE OF PROCEEDINGS:**

Plaintiff concedes the merits of the motion by failing to oppose the motion. It appears the failure to oppose was a deliberate choice, as the failure to withdraw the complaint would also have been a deliberate choice.

As to sanctions requests made under Code of Civil Procedure Section 128.7, there must be strict compliance with the requirement that the motion be filed only after 21 days following service, or as otherwise ordered. [Galleria Plus, Inc. v. Hanmi Bank (2009) 179 Cal.App.4th 535, 538].

Defendant did strictly comply with the safe harbor provisions.

The sanctions under Section 128.7 may be awarded against attorneys and parties responsible for the violation except that parties cannot be sanctioned for a violation of Section 128.7(b)(2) (regarding nonfrivolous claims, defenses or contentions). (Code Civ. Proc., § 128.7, subd. (d)(1)).

The court has found violations of subdivision (b)(1) the complaint was filed for an improper purpose to harass defendant and subdivision (b)(2) the complaint is lacking in evidentiary support and are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. The court is inclined to strike the

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**NATURE OF PROCEEDINGS:**

complaint as a sanction.

The court also orders plaintiff and her attorney, Randy C. Whaley and Whaley Law Firm, to pay defendant reasonable attorney fees of \$9,761 as a sanction, payable to the moving defendant/defendant's counsel within 30 days.

Defendant is to prepare, serve and submit the order and give notice.

The plaintiff's motion for leave to amend the complaint and the case management conference are taken off-calendar.

Note that plaintiff Darci S. Isom has appeared this date via CourtCall, without counsel. She indicates that she was unaware that her attorney had not submitted "the proper documents," and adds that he has "basically abandoned the case."

Also note that Shirley Isom, deceased, was named as a defendant to this action in her capacity as Settlor and Trustee of the subject Trusts, but there is no estate or personal representative designated to appear on her behalf in this action.

LATER: The court orders that the complaint as against decedent Shirley Isom, in her capacity as Settlor and Trustee of the subject trusts, be stricken.

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**NATURE OF PROCEEDINGS:**

Counsel for defendant Scarlatelli is to incorporate this ruling in his proposed order and notice.

Note that there two active probate cases involving Trust assets, one in San Bernardino County (case No. PRO PS 1506303), and another in this courthouse (see case No. BP164065), assigned to The Hon. David S. Cunningham III in Department 67.

An additional matter that potentially may involve Trust assets is family law case No. KD077685, MISCHELYNN SCARLATELLI v. MARK W. SCARLATELLI, assigned to The Hon. Bruce G. Iwasaki in Department 63 of this court. A judgment was entered in that matter on September 5, 2010, but additional proceedings were conducted as recently as August of this year.

**CLERK'S CERTIFICATE OF MAILING**

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order dated 9-24-15 upon defense counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address

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**NATURE OF PROCEEDINGS:**

as shown below with the postage thereon fully prepaid,  
in accordance with standard court practices.

Dated: 9-24-15

Sherri R. Carter, Executive Officer/Clerk

By: \_\_\_\_\_  
                    *[Signature]*  
                    S. Smythe, Deputy

Dagrella Law Firm, PLC  
Attn.: Jerry R. Dagrella, Esq.  
11801 Pierce St.  
Second Floor  
Riverside, Calif. 92505

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