

Maxwell M. Blecher (SBN 26202)  
mblecher@blechercollins.com  
BLECHER COLLINS PEPPERMAN & JOYE, P.C.  
515 South Figueroa Street, Suite 1750  
Los Angeles, California 90071-3334  
Telephone: (213) 622-4222  
Facsimile: (213) 622-1656

Bobby Samini (SBN 181796)  
bsamini@saminilaw.com  
SAMINI SCHEINBERG, PC  
949 South Coast Drive, Suite 420  
Costa Mesa, California 92626  
Telephone: (949) 724-0900  
Facsimile: (949) 724-0901

Gary M. Ruttenberg (SBN 48590)  
gruttenberg@bloom-ruttenberg.com  
Stefanie S. Cutler (SBN 254364)  
scutler@bloom-ruttenberg.com  
BLOOM & RUTTENBERG  
11111 Santa Monica Blvd., Suite 1840  
Los Angeles, CA 90025-3344  
Telephone: (310) 444-1979  
Facsimile: (310) 444-1917

Alexander Ginzburg (SBN 166795)  
alexander@gbllp-law.com  
Yasha Bronshteyn (SBN 210248)  
yasha@gbllp-law.com  
GINZBURG & BRONSHTEYN, LLP  
11111 Santa Monica Blvd., Suite 1840  
Los Angeles, CA 90025-3344  
Telephone: (310) 914-3222  
Facsimile: (310) 914-4242

Attorneys for Respondent  
DONALD T. STERLING

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

In the Matter of

THE STERLING FAMILY TRUST.

Case No. BP152858

Assigned to Hon. Michael Levanas, Dept. 5

**RESPONDENT'S REPLY IN SUPPORT  
OF REQUEST FOR CONTINUANCE**

Trial Date: July 7, 2014  
Time: 1:30 p.m.  
Dept.: 5

Petition Filed: June 11, 2014



1 A short continuance is warranted in this matter in order to allow Respondent Donald T.  
2 Sterling (“Donald”) an opportunity to have a full and fair hearing on the merits of the case. Dr.  
3 Cummings’ presence and testimony at trial is absolutely required to afford Donald this, and  
4 pursuant to the factors set forth in California Rules of Court, Rule 3.1332, a brief three- or four-  
5 week continuance is not unreasonable in light of the significance of this matter and the unique  
6 circumstances presented.

7 A trial judge’s discretion in granting a continuance is broad, and will be upheld on appeal  
8 unless it appears that denial of a continuance resulted in denial of a full and fair hearing. *Cade v.*  
9 *Mid-City Hospital Corp.*, 45 Cal.App.3d 589, 599 (1975). “It is unquestionably true . . . that the  
10 disposition of the courts is to show great liberality in granting continuances in civil cases, when it  
11 is fairly apparent that to do otherwise will have the effect of denying to the applicant the right to  
12 his day in court.” *Ross v. Thirlwall*, 101 Cal.App. 411, 415 (1929); *see also Canal Oil Co. v. Nat’l*  
13 *Oil Co.*, 19 Cal.App.2d 524, 535 (1937); *Callegari v. Maurer*, 4 Cal.App.2d 178, 181 (1935).  
14 “Such decisions must be made in an atmosphere of substantial justice . . . and the strong public  
15 policy favoring disposition on the merits outweighs the competing policy favoring judicial  
16 efficiency.” *Oliveros v. County of Los Angeles*, 120 Cal.App.4th 1389, 643 (2004).

17 **I. Donald Has Demonstrated Good Cause for the Requested Continuance Under Rule**  
18 **3.1332**

19 Pursuant to California Rules of Court, Rule 3.1332(c), “each request for a continuance  
20 must be considered on its own merits.” Rule 3.1332(c). “The court may grant a continuance only  
21 on an affirmative showing of good cause requiring the continuance.” *Id.* The following  
22 circumstances applicable here constitute good cause in support of the requested continuance: (1)  
23 the unavailability of an essential expert witness because of excusable circumstances (Rule  
24 3.1332(c)(1)); (2) a party’s excused inability to obtain essential testimony, documents, or other  
25 material evidence despite diligent efforts (Rule 3.1332(c)(6); and (3) a significant, unanticipated  
26 change in the status of the case as a result of which the case is not ready for trial (Rule  
27 3.1332(c)(7).  
28



1 In ruling on Donald's request, "the court must consider all the facts and circumstances that  
2 are relevant to the determination." Rule 3.1332(d); *see Thurman v. Bayshore Transit Mgmt., Inc.*,  
3 203 Cal.App.4th 112, 1126 (2012) ("Among other facts and circumstances, the trial court properly  
4 considers the proximity of the trial date, whether there were previous trial continuances, the length  
5 of the requested continuance, and the prejudice that parties or witnesses would suffer as a result of  
6 the continuance.").

7 Rule 3.1332(d) sets forth other factors which may be considered. Here, the relevant facts  
8 and circumstances that the court "must" consider include:

9 **(1) The proximity of the trial date;**

10 The trial date is imminent: the trial is set to begin on July 7, 2014. Therefore granting a  
11 continuance on the matter is appropriate under the circumstances (especially considering the fact  
12 that a continuance has not already been granted and that the trial was already set on short notice).

13 **(2) Whether there was any previous continuance, extension of time, or delay of trial**  
14 **due to any party;**

15 No previous continuance have been requested or granted. The trial was set on short notice.

16 **(3) The length of the continuance requested;**

17 Donald is only seeking about a three-week extension on the trial, which is absolutely  
18 reasonable under the circumstances, considering the amount at stake and the short notice for the  
19 scheduled trial date.

20 **(4) The availability of alternative means to address the problem that gave rise to the**  
21 **motion or application for a continuance;**

22 Here, Petitioner argues that a video deposition is an available alternative to receive Dr.  
23 Cummings' testimony in lieu of granting a continuance. Petitioner cites the case of *Eberly v.*  
24 *Egan*, 86 Cal.App.439 (1927) for the proposition that a court's refusal of a continuance was proper  
25 where the deposition of a witness, indisposed at time of trial, was taken under stipulation and read  
26 in open court. However, in *Eberly*:

27 The record shows that at the time of the trial Mrs. Peabody, who  
28 was present as a witness for appellant, was, owing to an  
indisposition, unable to testify. Due to this fact the trial was by



1 stipulation of the parties continued for thirty days, it being agreed  
2 that in the meantime her testimony should be taken by deposition.  
3 Pursuant to the stipulation the deposition was taken and was read  
4 in open court and her testimony so given made a part of the record.

5 *Id.* at 440. The 1927 *Eberly* case is factually dissimilar to Donald's case. First, there is no  
6 comment by the Court on how important the witness' testimony was to appellant's case; second,  
7 the parties stipulated to the deposition procedure and (3) the trial was actually continued.

8 Cummings' testimony and appearance in Court on this matter is absolutely necessary for a  
9 full and fair hearing on the merits of the issues and to refute Petitioners' doctors' findings. Donald  
10 should be entitled to the opportunity to have the highly esteemed expert of his choice, Dr.  
11 Cummings, testify at trial in open court.

12 **(5) If the case is entitled to a preferential trial setting, the reasons for that status and  
13 whether the need for a continuance outweighs the need to avoid delay;**

14 The Court informed the parties that the case was given preferential trial scheduling over  
15 other matters because of a coincidental opening in the Court's schedule. Donald's need for a  
16 continuance to conduct a full and fair trial outweighs the needs to avoid a brief delay.

17 **(6) The court's calendar and the impact of granting a continuance on other pending  
18 trials;**

19 The Court mentioned that one of the reasons for putting this trial on calendar (and on short  
20 notice) for July 7th in the first place, was because another matter had settled and opened up a  
21 window for this trial to occur during this time. However, the court should be inclined to grant a  
22 short continuance, at least until the end of July (in fact, it has already suggested that it is inclined  
23 to do so).

24 **(7) Whether trial counsel is engaged in another trial;**

25 This factor is not applicable in these circumstances.

26 **(8) Whether all parties have stipulated to a continuance;**

27 Petitioner has not stipulated to a continuance. In her opposition, Petitioner cites the case of  
28 *Pham v. Nguyen*. The court, in part, held in that case that:

1 the law should also encourage professional courtesy between  
2 opposing counsel—which is precisely what the Legislature did in  
3 section 595.2. The law should not create an incentive to take the  
4 scorched earth, feet-to-the-fire attitude that is all too common in  
5 litigation today. Bitterly fought continuance motions are not  
6 particularly productive for either the administration of justice  
generally or the interests of the litigants particularly. When  
opposing counsel needs a continuance, courts should look to  
section 595.2 as a statement of policy in favor of professional  
courtesy, not churlishness.

7 Here, the Court could grant a continuance as a matter of professional courtesy, especially  
8 since the trial was set on short notice and since a continuance has not already been granted.

9 **(9) Whether the interests of justice are best served by a continuance, by the trial of**  
10 **the matter, or by imposing conditions on the continuance;**

11 Already set on very short notice, a continuance would best serve the interests of justice in  
12 providing Donald with sufficient time to have his expert of choice give his world-renown medical  
13 opinion and testify in court on the matter of Donald's capacity as well as provide input on the  
14 findings of Petitioner's doctors.

15 **(10) Any other fact or circumstance relevant to the fair determination of the motion**  
16 **or application.**

17 The following facts are relevant to the fair determination of this motion:

18 a) Petitioner Rochelle H. Sterling ("Shelly") hand-picked two doctors to  
19 surreptitiously remove Donald as a trustee of the Trust via medicals findings holding that he  
20 "lacks capacity." This in turn would allow the sale of the Clippers to proceed through Shelly to  
21 Ballmer without the need for Donald's approval.

22 b) Donald was not told the truth about the medical examinations. If Donald was  
23 properly advised of the purpose, nature, and consequences of the mental examinations, he would  
24 have cooperated per the terms of the trust. But he would have also been prepared and chosen a  
25 time and place that would have been more conducive for the exams. Instead, the doctors failed to  
26 provide full disclosures, and Donald was pulled out of important legal meetings with multiple  
27 attorneys. Donald would have also eaten properly and have been well rested and focused on  
28 taking the exam with the understanding what it was for and the serious nature of taking the exam.

1 He was blindsided and in a highly emotional state given the surrounding issues regarding the short  
2 time to respond to the NBA and Commissioner Silver's disciplinary actions levied against him.

3 c) As the Court conceded, the trial was set on very short notice—indeed less than 30  
4 days' notice.

5 d) A continuance has not previously been sought.

6 e) An opportunity for Donald to present his case in the best light possible (i.e.,  
7 meaning that Dr. Cummings be given an ample time to prepare his findings and opinion as well as  
8 the extremely important opportunity to be physically present in Court) is absolutely mandatory as  
9 the forced sale of a \$2 Billion asset is at stake in this case.

10 With regard to Shelly's argument on page 7 that Dr. Cummings' testimony is irrelevant  
11 and that his alleged unavailability does not constitute grounds for continuing the trial, Shelly cites  
12 *Johnson v. Fassett*, 132 Cal.App.2d 871, 872-73 (1955) for the notion that "(a) trial continuance  
13 (is) properly denied where there (is) nothing in (the) record to show that (the) testimony of an  
14 expert medical witness, if offered, would be relevant to (the) issues involved."

15 However, the *Johnson* court based its reasoning on the fact that there wasn't any affidavit  
16 offered up by appellants' counsel, and that no showing was even made as to the doctor's  
17 agreement to testify in the case. Further, at no time did appellants' counsel state to the court that  
18 the doctor had consented to appear in the case, nor did he produce any written communication  
19 from the doctor, even though the case had been pending for over two years. Donald's case is  
20 fundamentally factually dissimilar: Donald engaged Dr. Cummings' services only a couple of  
21 weeks ago, Dr. Cummings has stated that he is willing and will testify in Court as to the relevant  
22 issues, and, as requested by the Court, a detailed revised declaration has been filed on behalf of  
23 Dr. Cummings as to why he will be unavailable for two to three weeks.

24 **II. A Short Continuance Will Promote Substantial Justice and a Full and Fair**  
25 **Disposition on the Merits**

26 Courts have an overriding interest in substantial justice and a full and fair disposition on  
27 the merits. These considerations outweigh Shelly's objective in opposing the continuance, which  
28



1 essentially is to resolve this matter on her terms and her schedule and based on solely the letters of  
2 the doctors she and her counsel retained.

3 *[D]ecisions about whether to grant a continuance or extend*  
4 *discovery ‘must be made in an atmosphere of substantial justice.*  
5 *When the two policies collide head-on, the strong public policy*  
6 *favoring disposition on the merits outweighs the competing policy*  
7 *favoring judicial efficiency... ‘While it is true that a trial judge*  
8 *must have control of the courtroom and its calendar and must have*  
9 *discretion to deny a request for a continuance when there is no*  
10 *good cause for granting one, it is equally true that, absent [a lack*  
11 *of diligence or other abusive] circumstances..., a request for a*  
12 *continuance supported by a showing of good cause usually ought*  
13 *to be granted.’*

14 *Hernandez v. Superior Court*, 115 Cal.App.4th 1242, 824-25 (2004) (citation omitted) (emphasis  
15 added).

16 Courts show great liberality in granting continuances in order to ensure parties their day in  
17 court. *Ross*, 101 Cal.App. at 415. Trial courts have broad discretion to grant a continuance where  
18 a party has not had sufficient time to properly prepare. A party is entitled to a continuance of a  
19 scheduled trial based on “a showing that he has not had such knowledge long enough to enable  
20 him to properly prepare. In each such case it is question for discretion of trial court.” *Maynard v.*  
21 *Bullis*, 99 Cal.App.2d 805, 807 (1950). “[T]he trial judge must exercise his discretion with due  
22 regard to all interests involved, and the refusal of a continuance which has the practical effect of  
23 denying the applicant a fair hearing is reversible error.” *Oliveros*, 120 Cal.App.4th at 1395.

24 In *Cotton v. StarCare Med. Group, Inc.*, 183 Cal.App.4th 437, 444-45 (2010), plaintiffs’  
25 lead counsel’s vacation was good cause for a stipulated one-month continuance, and the trial court  
26 abused its discretion by rejecting it.

27 Affidavits or other valid proof should satisfactorily show the Court the necessity for the  
28 presence of the absent witness, the fact that the party’s interest will suffer by that witness’  
absence, and reasonably assure that witness may be present at a future specified date to which trial  
may be continued, and if postponement is sought to procure the evidence of a witness, due  
diligence and materiality of evidence must be shown by affidavits.” *Taylor v. Gordon*, 102  
Cal.App.2d 233, 240-41 (1951).

In order for a full and fair hearing to be conducted on the matter, Dr. Cummings must be allowed to attend the trial and present on his findings in Court and actively engage in cross-examination. Dr. Cummings' availability for a video deposition is insufficient to outweigh all the other factors that cut in favor of the Court granting a brief three-week continuance on the trial, which would avoid any type of prejudice to Donald and allow him to present his case as best as possible (and still under relatively short notice!). Petitioner largely cites case law that is overwhelmingly factually dissimilar to the facts in this case and therefore, such cases are easily distinguished.


The fact that Shelly is vigorously objecting to a slight delay of a trial—with complicated issues, high stakes, and severe consequences—set on extremely short notice further shows that Donald was blindsided by his wife and co-trustee who hopes to pull this sale off before Donald can fully prepare and present his best case in Court. Donald should not be deprived of a full and fair opportunity hearing on the merits with the expert of his choice.

### Conclusion

Respondent's request for a continuance in this matter is justified, makes practical sense, is not brought to prejudice, harass, or inconvenience other parties or for other strategic reasons (as Petitioner serendipitously asserts), and comes within the specifications of Rule 3.1332.

Dated: June 29, 2014

BLECHER COLLINS PEPPERMAN & JOYE, P.C.

By: 

Maxwell M. Blecher  
Attorneys for Respondent  
DONALD T. STERLING

59895.1



**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 515 South Figueroa Street, Suite 1750, Los Angeles, CA 90071-3334.

On June 29, 2014, I served true copies of the following document(s) described as **RESPONDENT'S REPLY IN SUPPORT OF REQUEST FOR CONTINUANCE** on the interested parties in this action as follows:

Bertram Fields  
Pierce O'Donnell  
Marc M. Stern  
Caroline Heindel  
GREENBERG GLUSKER FIELDS  
CLAMAN & MACHTINGER LLP  
1900 Avenue of the Stars, 21st Floor  
Los Angeles, CA 90067-4590  
E-mail: BFields@GreenbergGlusker.com  
PODonnell@GreenbergGlusker.com  
MStern@GreenbergGlusker.com  
CHeindel@GreenbergGlusker.com

Adam F. Streisand  
Amy K. Bell  
LOEB & LOEB, LLP  
10100 Santa Monica Blvd., Suite 2200  
Los Angeles, CA 90067  
E-mail: astreisand@loeb.com

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent to the persons at the e-mail addresses listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 29, 2014, at Los Angeles, California.

\_\_\_\_\_  
Lorelei L. Gerdine