

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF VENTURA

Tentative Ruling

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**2025CUBC053947: MICHAEL P KELLY vs CELIA WISE**  
**01/29/2026 in Department 43**  
**Demurrer and Motion to Strike**

The morning calendar in courtroom 43 will normally begin at 8:45. Please arrive for your hearing no later than 8:30 a.m. The door will be opened before the calendar is called.

The Court allows appearances by CourtCall and Zoom. Refer to the Courtroom 43 webpage for more information about remote appearances. If appearing by CourtCall, call in no later than 8:30 a.m. If you wish to appear by CourtCall, you must make arrangements with CourtCall by 4:00 p.m. the court day before your scheduled hearing. Requests for approval of a CourtCall appearance made on the morning of the hearing will not be granted. No exceptions will be made.

For Zoom appearances, all counsel appearing by Zoom must email the court at Courtroom43@ventura.courts.ca.gov with a simultaneous copy to all other counsel/self-represented parties no later than 3:00 p.m. the court day before the hearing. INCLUDE THE PHRASE "ZOOM APPEARANCE ON (DATE OF HEARING)" IN THE SUBJECT LINE OF YOUR EMAIL. The email must identify the person who will make the appearance. You will receive the login information for your appearance in reply to your email. If appearing by Zoom, log into the hearing no later than 8:30 a.m. The Court will transfer you to the meeting room when your matter is called. Additional instructions can be found on the Courtroom 43 webpage. When you log in to Zoom, be sure that your name and the case name are used as your Zoom name. IF YOU DO NOT FOLLOW ALL OF THESE INSTRUCTIONS, YOU WILL NOT BE PERMITTED TO APPEAR BY ZOOM AT THE HEARING.

With respect to the tentative ruling below, no notice of intent to appear is required. If you wish to submit on the tentative ruling you can fax notice to Judge Coats's secretary, Ms. Brantner at 805-477-8790, stating that you submit on the tentative. Or you may email Courtroom43@ventura.courts.ca.gov with all counsel copied on the email. Do not call in lieu of sending a fax or email. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. If you are the moving party and do not advise the Court that you submit on the tentative, or you do not appear at the hearing, the Court may deny your motion irrespective of the tentative.

Unless stated otherwise at the hearing, if a formal order is required but not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

**Motion:** Cross-Defendant's Demurrer to Cross-Complaint and Motion to Strike Portions of the Cross-Complaint

**Tentative Ruling:** Cross-Defendant's Demurrer to Cross-Complaint is OVERRULED. The Motion to Strike Portions of the Cross-Complaint is DENIED.

Cross-Defendant demurs on the ground that the cross-complaint fails to state facts sufficient to constitute a cause of action and uncertainty. Cross-Defendant argues that the pleading does not allege that Cross-Defendant provided any written tax projection or calculation; Cross-Defendant provided any specific numerical estimate on which Cross-complainant relied; when any alleged advice was given; what decision Cross-complainant made in reliance on the advice; and how any reliance caused \$250,000 in damages.

Cross-Defendant further argues that the allegations of reduced and increased taxes are uncertain.

Cross-Defendant's moves to strike the allegation that Wise suffered \$250,000 in damages, any reference to damages not supported by factual allegations, and any conclusory allegations of professional negligence unsupported by pleaded facts.

The Court notes:

“A notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense. Specifications in a notice must be numbered consecutively.” (Cal. Rule Court, r. 3.1322, subd. (a).) Kelly fails to cite to specific portions of the cross-complaint. This is a sufficient basis for the Court to deny the motion to strike. However, the motion to strike is also denied on the merits.

The elements of a cause of action for professional malpractice are:

- (1) the duty of the professional to use such skill, prudence and diligence as other members of the profession commonly possess and exercise;
- (2) breach of that duty;
- (3) a causal connection between the negligent conduct and the resulting injury;
- and (4) actual loss or damage resulting from the professional negligence.

(*Giacometti v. Aulla, LLC* (2010) 187 Cal.App.4th 1133, 1137.)

Cross-Defendant challenges the complaint solely based on alleged insufficiency in the detail of the pleading. As Cross-complainant points out, there is no heightened pleading standard for a professional negligence claim. (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 998.)

The cross-complaint alleges that Cross-Defendant was a certified public accountant and owed a duty to Wise. (Cross-complaint ¶ 15.) Cross-Defendant breached the duty by offering unqualified tax advice. (Cross-complaint ¶ 16.) Cross-Defendant relied on the tax advice, sold her home in the United Kingdom, and incurred damages of increased tax liability, interest, fees, and penalties. (Cross-complaint ¶ 13.) Cross-complainant suffered damages as a result of the alleged negligence. (Cross-complaint ¶ 18.)

These allegations are sufficient to establish a prima facie case of professional negligence at the pleading stage. The demurrer is overruled and the motion to strike is denied.