

1. ESTATE OF JACKSON PP-20210165

Petition to Admit Will to Probate.

There no proof of service of notice of the hearing and a copy of the petition on alternate executor Craig Jackson in the court's file.

“At least 15 days before the hearing of a petition for administration of a decedent's estate, the petitioner shall serve notice of the hearing by mail or personal delivery on all of the following persons: (a) Each heir of the decedent, so far as known to or reasonably ascertainable by the petitioner. (b) Each devisee, executor, and alternative executor named in any will being offered for probate, regardless of whether the devise or appointment is purportedly revoked in a subsequent instrument.” (Probate Code, § 8110.)

The petitioner has not filed an executed a statement of duties and liabilities. (Judicial Council Form DE-147.) Prior to issuing letters of administration, the personal representative, other than a trust company or public administrator, shall file an acknowledgement of receipt of a statement of duties and liabilities of the office of personal representative. The statement is a mandated Judicial Council form. (Probate Code, § 8404(a).)

There is no proof of publication in the court's file. (See Probate Code, §§ 8120 and 8121(a).) The court can not consider this petition absent proof of publication.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 18, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

2. ESTATE OF DIANA SCHOTT PP-20210134

ESTATE OF DIANA SCHOTT PP-20210078

Request for Consolidation.

On April 16, 2021 Letters of Special Administration of the Estate of Diana Joy Schott were issued under case number PP-20210078. The petition for general administration of the estate was not filed in case number PP-20210078. It was instead filed under case number PP-20210134. Letters Testamentary were filed in Estate of Diana Joy Schott, case number PP-20210134 on August 25, 2021.

Special administrator/executor Matthew Schott moves to consolidate both cases as notices to creditors were sent out under case number P-20210078 and one creditor has filed a claim under that case number.

The proof of service declares that the interested persons were served notice of the hearing. It does not state that they were also served a copy of the request for consolidation.

“When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” (Code of Civil Procedure, § 1048(a).)

“Unless otherwise provided in the order granting the motion to consolidate, the lowest numbered case in the consolidated case is the lead case.” (Rules of Court, Rule 3.350(b).)

Under the circumstances presented, it appears appropriate to grant the motion and consolidate the two cases for all purposes under case number PP-202100078. However, the special administrator/executor failed to serve a copy of the request for consolidation on will beneficiary Lisa Schott and creditor claimant U.C. Davis Heath.

“Where the court determines that the notice otherwise required is insufficient in the particular circumstances, the court may require that further or additional notice, including a longer period of notice, be given.” (Probate Code, § 1202.) The court has determined that failure to serve a copy of the moving papers/request for consolidation referred to in a notice of hearing is insufficient to meet the requirements of fundamental due process and, therefore, petitioner is required to serve a copy of the request for consolidation along with the notice of hearing.

Due to the lack of proof of service of a copy of the request, the court will have to continue the hearing to allow the special administrator/executor to correct the service defect.

TENTATIVE RULING # 2: THIS MATTER IS CONTINUED TO 8:30 A.M. ON WEDNESDAY, JUNE 22, 2022 IN DEPARTMENT EIGHT.

3. ESTATE OF DAILEY 21PR0034

Review Hearing Re: Inventory and Appraisal.

**TENTATIVE RULING # 3: THE FINAL INVENTORY AND APPRAISAL HAVING BEEN
FILED ON MARCH 15, 2022, THIS MATTER IS DROPPED FROM THE CALENDAR.**

4. ESTATE OF DEISENROTH PP-20210211

Review Hearing Re: Inventory and Appraisal.

Letters of Administration were issued on December 8, 2021. There is no Final Inventory and Appraisal in the court's file.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 18, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

5. ESTATE OF DYSTHE PP-20210096

Final Report on Waiver of Account and Petition for Final Distribution.

TENTATIVE RULING # 5: THE PETITION IS GRANTED. FEES ARE FIXED AND PAYMENT ALLOWED AS REQUESTED. FINAL DISTRIBUTION IS ORDERED AS REQUESTED. THE COURT CONFIRMS THE REVIEW HEARING RE: STATUS OF ADMINISTRATION SET FOR 8:30 A.M. ON WEDNESDAY, JULY 20, 2022 IN DEPARTMENT EIGHT AT WHICH TIME THE COURT ANTICIPATES THAT A RECEIPT OF FINAL DISTRIBUTION EXECUTED BY THE TRUSTEE OF THE EDWARD AND LINDA DYSTHE FAMILY TRUST WILL HAVE BEEN FILED AND AN EX PARTE PETITION FOR FINAL DISCHARGE (JUDICIAL COUNCIL FORM DE-295.) SUBMITTED.

6. ESTATE OF NIELSEN 21PR0023

Review Hearing Re: Inventory and Appraisal.

Letters of Administration were issued on January 25, 2022. There is no Final Inventory and Appraisal in the court's file

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 18, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

7. ESTATE OF PEARSON PP-20210041

Review Hearing Re: Status of Administration.

**TENTATIVE RULING # 7: THE ORDER OF FINAL DISCHARGE HAVING BEEN ENTERED
ON FEBRUARY 3, 2022, THIS MATTER IS DROPPED FROM THE CALENDAR.**

8. ESTATE OF DOLCINI PP-20210067

Review Hearing Re: Status of Administration.

Letters of Administration were issued on May 19, 2021. The Final Inventory and Appraisal was filed on November 16, 2021. There is no Final Account and Request for Order of Final Distribution in the court's file.

TENTATIVE RULING # 8: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 18, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

9. ESTATE OF WILSON PP-20210048

Review Hearing Re: Inventory and Appraisal.

TENTATIVE RULING # 9: THE FINAL INVENTORY AND APPRAISAL HAVING BEEN FILED ON MARCH 16, 2022, THIS MATTER IS DROPPED FROM THE CALENDAR.

10. ESTATE OF JACKSON PP-20210048

(1) 1st Account and Report and Petition for Final Distribution.

(2) Review Hearing Re: Status of Administration.

The verified petition states in paragraph 8 that no creditor claims were filed against the estate. Within four months after Letters Testamentary were issued on May 5, 2021, on August 25, 2021 a creditor's claim was filed on behalf of Merrick Bank Corp. in the amount of \$2,341.55 claimed as due and owing on a credit card account. A request for special notice by the creditor's law firm was filed on September 27, 2021. There is no allowance or rejection of the claim in the court's file. This needs to be addressed.

The estate administration is not in a condition to be closed and distributed.

There is no proof of service of notice of the hearing and a copy of the 1st Account and Report and Petition for Final Distribution on the will beneficiaries and creditor claimant Merrick Bank Corp., which had also filed a request for special notice on September 27, 2021.

The court can rule on the merits of the Account and petition until proof of adequate notice has been served on all interested parties.

Appearances are required to address the creditor claim and service issues.

TENTATIVE RULING # 10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 18, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

11. ESTATE OF CUFFE 21PR0041

Review Hearing Re: Inventory and Appraisal.

Letters of Administration were issued on January 19, 2022. There is no Final Inventory and Appraisal in the court's file

TENTATIVE RULING # 11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 18, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

12. ESTATE OF MARTIN PP-20210064

Review Hearing Re: Inventory and Appraisal.

Letters of Administration were issued on January 14, 2022. There is no Final Inventory and Appraisal in the court's file

TENTATIVE RULING # 12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 18, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

13. ESTATE OF MCCALLISTER 21PR0019

Review Hearing Re: Inventory and Appraisal.

TENTATIVE RULING # 13: THE FINAL INVENTORY AND APPRAISAL HAVING BEEN FILED ON APRIL 4, 2022, THIS MATTER IS DROPPED FROM THE CALENDAR.

14. MATTER OF THE DAVID S. KASOLD REVOCABLE LIVING TRUST 22PR0077**1st and Final Account and Petition for Orders re: Trustee Compensation, Construction of Trust, Ascertaining Trust Beneficiaries, Passing Upon Discretionary Acts of Trustee, and Instructing Trustee.**

Successor Trustee/Trust Beneficiary Blomsterberg petitions for the following orders: to allow, settle, approve, and confirm the 1st and final account of the 30 months she has administered the trust since the settlor passed away; to fix and allow payment of \$12,230.47 in trustee compensation as it is the amount of ordinary compensation she would have been paid to administer the decedent's estate; that the death of trust beneficiary David C. Kasold prior to the time for distribution resulted in the lapse of his share of his remainder of the Trust under the terms of the original trust instrument and rather than David Kasold's three issue receiving his 1/3 share, the two remaining residual beneficiaries are each entitled to receive 50% of the remainder of the Trust; and to authorize trustee/trust beneficiary Blomsterberg to sell the Trust estate residence to herself for \$191,434.64, representing deductions from a sales price of \$530,000 amounting to \$338,565.36, which consist of reimbursement for costs advanced by the trustee to pay for expenses of the Trust, costs advanced to pay for Trust attorney fees, trustee compensation, the trustee's estimate of the value of the 30 months remaining on her five year estate in the real property that the settlor provided for in the Trust as amended at the rate of \$3,500 per month estimated rental value, and the value of the trustee's 50% share of the remainder of the Trust estate after the other deductions and expenses are provided for.

The proof of service declares that on March 29, 2022 surviving beneficiary Malcolm Kasold and the three issue of deceased beneficiary David S. Kasold were served notice of the hearing

and a copy of the petition by mail. At the time this ruling was prepared there was no opposition or objections to the petition in the court's file.

However, an objection can be made at any time and even orally at the hearing. (Probate Code, § 1043.)

1st and Final Account and Report of Trustee

Proceedings concerning the internal affairs of the trust include, but are not limited to, "Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers." (Probate Code, § 17200(b)(5).)

The 1st and Final Account appears to be in order, subject to objections that may be raised at any time and even orally at the hearing. (Probate Code, § 1043.)

- Compensation of Trustee

"In determining or approving compensation of a trustee, the court may consider, among other factors, the following: ¶ (1) The gross income of the trust estate; ¶ (2) The success or failure of the trustee's administration; ¶ (3) Any unusual skill, expertise, or experience brought to the trustee's work; ¶ (4) The fidelity or disloyalty shown by the trustee; ¶ (5) The amount of risk and responsibility assumed by the trustee; ¶ (6) The time spent in the performance of the trustee's duties; ¶ (7) The custom in the community where the court is located regarding compensation authorized by settlors, compensation allowed by the court, or charges of corporate trustees for trusts of similar size and complexity; and ¶ (8) Whether the work performed was routine, or required more than ordinary skill or judgment." (Rules of Court, Rule 7.776.)

The trustee requests that the court fix and allow payment of \$12,230.47 in trustee compensation as it is the amount of ordinary compensation she would have been paid to administer the decedent's estate. This amounts to approximately \$407.68 per month for the 30

months that she has served as trustee. According to the 1st Account, there were few assets to administer in the trust. There were four credit union or bank accounts, a life insurance policy, a GMC truck and the subject real property that the trustee resided in under a five year estate as provided in the Trust instrument to commence upon the death of the settlor/grantor. Other than payment of bills for expenses related to the residence, perhaps review of account statements from time to time, and advancement of funds from the trustee's assets to continue to pay bills related to the residence she lived in, there does not appear to be much work involved in administering this estate. The work performed appears to have been routine.

The sum of \$25,000 of the \$26,560.77 in Trust estate receipts during the period of the accounting and the trustee's Trust administration are from cash advancements from the trustee.

The trustee has not provided a declaration stating whether she brought any unusual skill, expertise, or experience required for the trustee's work or setting forth the time spent in the performance of the trustee's duties during her 30 month administration of this Trust.

Additional information must be presented in order for the court to find that a reasonable compensation for the trustee amounts to \$407.68 per month for the 30 months that she has served as trustee

Construction of Trust and Ascertaining Trust Beneficiaries

A trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust. (Probate Code, § 17200(a).)

"Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes: ¶ * * * (4) Ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the

trust, to the extent the determination is not made by the trust instrument.” (Probate Code, § 17200(b)(4).)

Proceedings concerning the internal affairs of the trust include, but are not limited to, determining questions of construction of a trust instrument. (Probate Code, § 17200(b)(1).)

““The interpretation of a written instrument, including a ... declaration of trust, presents a question of law unless interpretation turns on the competence or credibility of extrinsic evidence or a conflict therein. Accordingly, a reviewing court is not bound by the lower court’s interpretation but must independently construe the instrument at issue. [Citations.]” [Citations.]’ (*Scharling v. Superior Court* (1992) 9 Cal.App.4th 162, 168, 11 Cal.Rptr.2d 448.) ‘In construing a trust instrument, the intent of the trustor prevails and it must be ascertained from the whole of the trust instrument, not just separate parts of it. [Citation.]’ (*Ibid.*)” (Wells Fargo Bank v. Marshall (1994) 20 Cal.App.4th 447, 452-453.)

“[T]he primary rule in construction of trusts is that the court must, if possible, ascertain and effectuate the intention of the trustor or settlor.’ (*Ephraim v. Metropolitan Trust Co.* (1946) 28 Cal.2d 824, 834, 172 P.2d 501.) ‘The intention of the transferor as expressed in the [trust] instrument controls the legal effect of the dispositions made in the instrument.’ (Prob.Code, §§ 21101, 21102.)” (Crook v. Contreras (2002) 95 Cal.App.4th 1194, 1206.) “In construing a trust instrument, the intent of the trustor prevails and it must be ascertained from the whole of the trust instrument, not just separate parts of it. (Citation omitted.)” (Scharlin v. Superior Court (1992) 9 Cal.App.4th 162, 168.) “Particularly in the field of interpreting trusts and wills, each case depends upon its own peculiar facts, and ‘ “precedents have comparatively small value....” ‘ (*Estate of Lawrence* (1941) 17 Cal.2d 1, 6, 108 P.2d 893; *Estate of Russell*, supra, 69 Cal.2d at pp. 210-211, 70 Cal.Rptr. 561, 444 P.2d 353.) It is the intention of the trustor, not the trustor’s lawyer, which is the focus of the court’s inquiry. (*Estate of Lindner* (1978) 85

Cal.App.3d 219, 226, 149 Cal.Rptr. 331.)” (Wells Fargo Bank v. Marshall (1994) 20 Cal.App.4th 447, 453.) The court’s duty is to determine the trustor’s intent and when determined, to give effect to that intent. That intent is to be gathered from the expressions in the trust. The centerpiece of that interpretation is the language contained within the will or in the trust document. (Estate of Parrette (1985) 165 Cal.App.3d 157, 161.)

The original Trust instrument provides in Article 4 regarding distribution upon the death of grantor/settlor that Rosalind Blomsterberg and the grantor’s two sons, David C. Kasold and Malcolm Kasold shall each receive equal 1/3 shares of the entire residue of the Trust estate; that no provision is made for the grantor’s daughter, Karen Kasold, or her issue; and “In the event of the death of any one or more of the above beneficiaries prior to distribution of their share, the remaining share shall be divided between the remaining beneficiaries equally or proportionately. I make no other provision for the issue or the other heirs of said beneficiaries.” (Petition, Exhibit A - Original Trust Instrument, Article 4.A.(2) through Article 4.A.(4).)

The petition contends that a 1st amendment to the Trust in 2018 amended Article 4 to provide that from the date of the grantor’s death, Rosalind Blomsterberg “shall have an exclusive estate in the home for five years with the taxes, insurance, maintenance, and upkeep to be paid by my trust. At the end of five years after my death, the home shall be sold and the proceeds divided in three ways between Rosalind Blomsterberg and my two children David C Kasold and Malcolm Kasold.” (Petition, paragraphs 18 and 20; and Exhibit A – 1st Amendment to Trust, page 1.)

Petitioner argues that these provisions construed together indicates that the settlor/grantor intended to have the right to distribution to David C. Kasold lapse upon his death, leaving no share to be distributed to his issue; and that this applied to the distribution of the proceeds of

the sale of the subject residence, thereby leaving Rosalind Blomsterberg and Malcom Kasold entitle to receive 50% of the proceeds from the sale of the subject residence.

The 1st amendment only amended Article 4. It did not replace it. Therefore, it is reasonable to construe that Article 4.A.(4) is applicable to the distribution of the proceeds from the sale of the residence at the conclusion of the five year estate granted to Ms. Blomsterberg.

However, one issue needs to be resolved before that construction is accepted. While the purported 1st amendment is attached as part of Exhibit A of the verified petition, the copy of the 1st amendment does not include the signature page of the amendment. Therefore, the court has no evidence before it that establishes the settlor/grantor ever executed that amendment. This needs to be remedied.

Instructing Trustee

The trustee states in the petition that there are insufficient funds in the Trust estate to pay the taxes, insurance, maintenance and upkeep of the residential property of the Trust estate until September 12, 2024 when Ms. Blomsterberg's five year estate expires, thereby leaving few alternatives to administer the residential property of the estate. The trustee could continue to advance her own funds to pay Trust expenses to maintain the residence with a right of reimbursement at the conclusion of the five year estate from the proceeds of the sale of the residence, encumber the property with a mortgage to generate capital to pay the household expenses as provided in the Trust instrument, or sell the property to the trustee/trust beneficiary, which she prefers. (Petition, paragraphs 21 and 22.)

“Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes: ¶ * * * (6) Instructing the trustee...” (Probate Code, § 17200(b)(6).)

Proceedings concerning the internal affairs of the trust include, but are not limited to, “...passing upon the acts of the trustee, including the exercise of discretionary powers.”

(Probate Code, § 17200(b)(5).)

“...a probate court may exercise its discretion to authorize trustee actions in advance or review the propriety of trustee actions after completion (see *Estate of Denton* (1971) 17 Cal.App.3d 1070, 1074–1076, 95 Cal.Rptr. 347).” (People ex rel. Harris v. Shine (2017) 16 Cal.App.5th 524, 539.)

The Third District Court of Appeal has held with regards to the burden of proof of a trustee seeking an order for instructions: ‘Here, the trustee sought instructions in part to obtain insulation from liability. In effect, the trustee pursued a “claim for relief” within the meaning of the Evidence Code. Moreover, the trustee knows the reasons for his contemplated action and has at his ready command whatever evidence tends to show his action will be undertaken reasonably. We therefore conclude a trustee petitioning for instructions as to the exercise of a discretionary power has the burden of proving the exercise will be reasonable.’ (Estate of Nicholas (1986) 177 Cal.App.3d 1071, 1087.) The Third District concluded there was no substantial evidence to support the trial court’s instruction of the trustee: “We will not pause long over the trustee’s bare assertion that he believes it is in the best interest of the trust that the livestock be sold. The trustee’s mere belief, unsupported by *any* facts or circumstances underlying the decision, does not constitute substantial evidence of reasonableness. ¶ A contrary conclusion would make a mockery of the process by which a court “instructs” a trustee, because the court would simply ratify the unexamined decision of the trustee.” (Estate of Nicholas (1986) 177 Cal.App.3d 1071, 1089.)

The appraiser states an opinion that as of August 2021 the property was worth \$530,000. (Petition, Exhibit C.) Exhibit C to the verified petition states on page 1 of 3 of the property

profile portion of the September 2021 appraisal that the residence was assessed at a value of \$550,000 in 2020 by the county assessor's office. This needs to be explained.

Although there are no oppositions or objections in the court's file, an objection can be made at any time and even orally at the hearing. (Probate Code, § 1043.) Therefore, appearances are required.

TENTATIVE RULING # 14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 18, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

15. MATTER OF THE BAIREUTHER TRUST PP-20200155

1st and Final Account and Report of Trustee and Petition for Allowance of Compensation.

The trustee petitions for the court to allow, settle, approve and confirm the 1st and final account of the trustee; to fix and allow trustee compensation as 2% of the value of the Trust assets per annum in the total amount of \$17,898.22; and to fix and allow payment of the trustee’s counsel’s attorney fees incurred during administration of the estate in the amount of \$5,000.

“Where the court determines that the notice otherwise required is insufficient in the particular circumstances, the court may require that further or additional notice, including a longer period of notice, be given.” (Probate Code, § 1202.) The court has determined that failure to serve a copy of the petition referred to in a notice of hearing is insufficient to meet the requirements of fundamental due process and, therefore, petitioner is required to serve a copy of the petition along with the notice of hearing.

There is no proof of service of notice of the hearing and a copy of the account and petition on the trust beneficiaries in the court’s file. The court can not rule on the merits of the account and petition absent proof of adequate service on the trust beneficiaries.

Appearances are required to advise the court when the trust beneficiaries will be served and to set a continued hearing date.

TENTATIVE RULING # 15: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 18, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE

SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT
www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

16. MATTER OF THE SADDLE ROAD TRUST PP-20210130

Petition to Suspend Trustee Powers, Remove Trustee, Compel Accounting, Deny Right to Pay Trustee Attorney Fees from Trust Assets, Surcharge Trustee and Order Repayment of Estate Property Wrongfully Taken by Trustee, Appoint Successor Trustee, and to Order Grantor/Trustee Garden to Pay Attorney Fees and Costs Incurred by Petitioners.

The verified petition alleges: petitioner is a beneficiary of the Trust with a 2/3 interest in the Trust; and grantor/trustee/beneficiary Garden has engaged in various alleged breaches of trust justifying the requested orders.

“Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.” (Probate Code, § 17200(a).) “Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes: ¶
* * * (10) Appointing or removing a trustee.” (Probate Code, § 17200(b)(10).)

“A trustee may be removed in accordance with the trust instrument, by the court on its own motion, or on petition of a settlor, cotrustee, or beneficiary under Section 17200.” (Probate Code, § 15642(a).)

“If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court deems necessary.” (Probate Code, § 15642(e).)

“If a trustee commits a breach of trust, or threatens to commit a breach of trust, a beneficiary or cotrustee of the trust may commence a proceeding for any of the following purposes that is appropriate: ¶ (1) To compel the trustee to perform the trustee's duties. ¶ (2) To enjoin the trustee from committing a breach of trust. ¶ (3) To compel the trustee to redress a breach of trust by payment of money or otherwise. ¶ (4) To appoint a receiver or temporary trustee to take possession of the trust property and administer the trust. ¶ (5) To remove the trustee. ¶ (6) Subject to Section 18100, to set aside acts of the trustee. ¶ (7) To reduce or deny compensation of the trustee. ¶ (8) Subject to Section 18100, to impose an equitable lien or a constructive trust on trust property. ¶ (9) Subject to Section 18100, to trace trust property that has been wrongfully disposed of and recover the property or its proceeds.” (Probate Code, § 16420(a).)

“A violation by the trustee of any duty that the trustee owes the beneficiary is a breach of trust.” (Probate Code, § 16400.)

The Third District Court of Appeal has stated: “A trustee may be removed by a court for misconduct, unfitness, or acquisition of an adverse interest. (See, e.g., Prob.Code, § 15642; 11 Witkin, Summary of Cal.Law (9th ed. 1990) Trusts, § 55.)” (Claypool v. Wilson (1992) 4 Cal.App.4th 646, 676.)

Proceedings concerning the internal affairs of a trust include, among other things, “(7) Compelling the trustee to do any of the following: ¶ (A) Provide a copy of the terms of the trust. ¶ (B) Provide information about the trust under Section 16061 if the trustee has failed to provide the requested information within 60 days after the beneficiary's reasonable written request, and the beneficiary has not received the requested information from the trustee within the six months preceding the request. ¶ (C) Account to the beneficiary, subject to the provisions of Section 16064, if the trustee has failed to submit a requested account within 60

days after written request of the beneficiary and no account has been made within six months preceding the request.” (Probate Code, § 17200(b)(7).)

Proceedings concerning the internal affairs of the trust include, but are not limited to, “Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers.” (Probate Code, § 17200(b)(5).)

“The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration.” (Probate Code, § 16060.) “[T]he general duty provided in this section is ordinarily satisfied by compliance with Sections 16061 and 16062 unless there are special circumstances requiring particular information to be reported to beneficiaries.” (Law Review Commission Comment to 1990 Enactment of Probate Code, § 16060.) “Except as provided in Section 16064, on reasonable request by a beneficiary, the trustee shall provide the beneficiary with a report of information about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiary’s interest, including the terms of the trust.” (Probate Code, § 16061.)

“Trustees are * * * under an obligation to render to beneficiaries a full account of all their dealings with the trust property, and where there has been a negligent failure to keep true accounts all presumptions are against them upon a settlement.” (*Estate of McCabe* (1950) 98 Cal.App.2d 503, 505, 220 P.2d 614, 616; see also, *Purdy v. Johnson* (1917) 176 Cal. 521, 527, 163 P. 893.)” (Blackmon v. Hale (1970) 1 Cal.3d 548, 560.)

“At least 30 days before the time set for the hearing on the petition, the petitioner shall cause notice of hearing to be mailed to all of the following persons: ¶ (1) All trustees. ¶ (2) All beneficiaries, subject to Chapter 2 (commencing with Section 15800) of Part 3. ¶ (3) The

Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General.” (Probate Code, § 17203(a).)

On July 21, 2021 declarations of unsuccessful due diligent attempts to personally serve the respondent trustee/beneficiary were filed. At the hearing on November 3, 2021 the court granted petitioner’s oral motion to serve the respondent by publication. Proof of publication not having been filed by the March 16, 2022 hearing, the hearing was continued to May 18, 2022.

At the time this ruling was prepared, there was no proof of service of notice of the hearing and a copy of the petition on respondent by publication in the court’s file.

TENTATIVE RULING # 16: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 18, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

17. MATTER OF THE PARKHURST TRUST PP-20160118

Readiness Conference.

The court trial is set to commence at 8:30 a.m. on May 26, 2022 in Department Eight. The trial is estimated to be a two day trial.

TENTATIVE RULING # 17: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 18, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.