

1. ESTATE OF WYTKIND PP-20210210

(1) Review Hearing Re: Inventory and Appraisal.

(2) Final Report and Petition for Final Distribution on Waiver of Account.

Paragraphs 8 and 9 of the petition states that notice of administration was provided to the California DHS, the Department of Social Security Administration and California Franchise Tax Board; and that no notice under Probate Code, § 9201 is required to any state agency. The court is unable to find any mention in the petition as to whether the personal representative was required to provide notice to the California Victim Compensation and Government Claims Board under the provisions of Probate Code, § 9202(b).

“(b) Not later than 90 days after the date letters are first issued to a general personal representative, the general personal representative or estate attorney shall give the Director of the California Victim Compensation and Government Claims Board notice of the decedent's death in the manner provided in Section 216 if the general personal representative or estate attorney knows or has reason to believe that an heir is confined in a prison or facility under the jurisdiction of the Department of Corrections and Rehabilitation or confined in any county or city jail, road camp, industrial farm, or other local correctional facility. The director of the board shall have four months after that notice is received in which to pursue collection of any outstanding restitution fines or orders.” (Probate Code, § 9202(b)).

This issue needs to be addressed.

The petition was filed on April 21, 2022 and served on the interested persons on April 21, 2022. It appears that the clerk's office set the hearing and entered the date and time by hand when it was filed on April 21, 2022, therefore, it is uncertain whether the petition served on the interested parties by mail on April 21, 2022 included notice of the date and time the clerk set for the hearing on the petition. This needs to be clarified.

TENTATIVE RULING # 1: THE FINAL INVENTORY AND APPRAISAL HAVING BEEN FILED ON APRIL 21, 2022, THE REVIEW HEARING RE: INVENTORY AND APPRAISAL IS DROPPED FROM THE CALENDAR. APPEARANCES ARE REQUIRED REGARDING THE FINAL REPORT AND PETITION FOR FINAL DISTRIBUTION ON WAIVER OF ACCOUNT AT 8:30 A.M. ON WEDNESDAY, JULY 6, 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 FORD 21PR0050

Petition to Terminate Trust, to Determine Ownership of Property, and to Direct Transfer of Property to Estate or Third Party Purchaser.

The personal representative seeks a court order terminating the C.W. Ford Living Trust, dated May 23, 1996 pursuant to Probate Code, § 15409(a) on the ground that continuation of the Trust will defeat the accomplishment of its purposes due to circumstances not known to or anticipated by the settlor as the Trust instrument can not be found and the property can not be transferred; finding that the subject real property is an asset of the estate; and authorizing and directing the personal representative to transfer the real property to a third-party purchaser pursuant to a sale as authorized by the Independent Administration of Estates Act.

The verified petition states: record title to decedent's real property was held as trustee of the C.W. Ford Living Trust, dated May 23, 1996; the estimate of the value of the real property is \$250,000; the property is subject to a reverse mortgage and a notice of default has been recorded on that reverse mortgage; despite a diligent search petitioner was unable to find a copy of the Trust instrument; petitioner's attorney was also unable to locate a copy of the Trust instrument as stated in her declaration that has been filed; decedent's sister and sole natural heir, Francis Ford, states in her declaration on file that her efforts to find the Trust instrument were fruitless; the trust is lost, the property can not be transferred, the identity of the successor trustee is unknown, and absent a court order, there is no one empowered to execute a deed to transfer the property; petitioner believes that prior to the deed transferring the property to the Trust, it was held in decedent's name; there is evidence that decedent had forgotten about the Trust in the intervening years, because on May 22, 2019 he executed the will that has been admitted to probate that bequests all his property without any reference to a Trust; and due to

the recorded default on the reverse mortgage and lack of sufficient cash in the estate assist to cure the default, the property needs to be sold in order to preserve the equity in the property for the benefit of the estate.

The court is unable to find declarations of decedent's sister, Francis Ford, and petitioner's attorney attached to the petition or filed with the court in support of the petition. This needs to be remedied.

“On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust. In this case, if necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.” (Emphasis added.) (Probate Code, § 15409(a).)

“(a) A trust terminates when any of the following occurs: ¶ * * * (4) The trust purpose becomes impossible to fulfil.” (Probate Code, § 15407(a)(4).)

“At the termination of a trust, the trust property shall be disposed of as follows: ¶ * * * (d) In any other case, as provided in the trust instrument or in a manner directed by the court that conforms as nearly as possible to the intention of the settlor as expressed in the trust instrument.” (Probate Code, § 15410(d).)

“All proceedings concerning the transfer of property of the trust shall be conducted pursuant to the provisions of Part 19 (commencing with Section 850) of Division 2.” (Probate Code, § 17200.1.)

The personal representative or any interested person may petition the court for an order in any of the following cases: “(D) Where the decedent died having a claim to real or personal property, title to or possession of which is held by another.” (Probate Code, § 850(a)(2)(D).)

There is no proof of service of notice of the hearing and a copy of the amended petition on the interested persons and, in particular, will beneficiary Francis Ford.

The court can not reach the merits of the petition absent proof of adequate notice and a copy of the petition on the interested persons.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JULY 6, 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.

3. ESTATE OF BEEBER 22PR0002

Review Hearing Re: Inventory and Appraisal.

Letters of Administration were issued on March 7, 2022. Bond was set in the amount of \$150,000. There was no Final Inventory and Appraisal in the court's file at the time this ruling was prepared.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JULY 6, 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.

4. ESTATE OF WILSON PP-2020077

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

TENTATIVE RULING # 3: ABSENT OBJECTIONS, THE PETITION IS GRANTED. THE 1ST AND FINAL ACCOUNT IS ALLOWED, SETTLED, APPROVED AND CONFIRMED. 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, NOVEMBER 9, 2022 IN DEPARTMENT EIGHT AT WHICH TIME THE COURT ANTICIPATES THAT THE RECEIPTS OF FINAL DISTRIBUTION WILL HAVE BEEN FILED AND AN EX PARTE PETITION FOR FINAL DISCHARGE (JUDICIAL COUNCIL FORM DE-295.) SUBMITTED.

5. ESTATE OF BEHRENDT PP-20200209

Review Hearing Re: Status of Administration.

On July 7, 2021 the court granted the petition and admitted the lost will to probate. Bond was set in the amount of \$97,000, which was posted on June 15, 2021. The order for probate was entered on May 4, 2022 and Letters Testamentary issued on that same date, which granted full authority under the Independent Administration of Estates Act. The Final Inventory and Appraisal was filed on April 28, 2022 stating that the assets of the estate were appraised to be worth \$131,472. The estate's real property was appraised as being worth \$130,000. The bond amount was set based upon the estimate in the verified petition that the real property was with \$96,103 with no encumbrances. The bond is inadequate. The court orders the bond increased to \$131,000.

TENTATIVE RULING # 5: BOND IS INCREASED TO \$131,000. THE COURT SETS A REVIEW HEARING RE: POSTING ADDITIONAL BND FOR 8:30 A.M. ON WEDNESDAY, AUGUST 3, 2022 IN DEPARTMENT EIGHT. THE REVIEW HEARING RE: INVENTORY AND APPRAISAL IS DROPPED FROM THE CALENDAR.

6. ESTATE OF WILLIAMS 22PR0112**Petition to Admit Will to Probate.**

The will was lodged with the court on April 25, 2022, but it is not self-proving. The petitioner has failed to file any proofs of the will executed by the subscribing witnesses. (California Judicial Council Form DE-131.) Unless there is a will contest, the will may be proved on the evidence of one of the subscribing witnesses, if the evidence shows that the will was executed in all particulars as prescribed by law. (Probate Code, § 8220(a).) “Evidence of execution of a will may be received by an affidavit of a subscribing witness to which there is attached a photographic copy of the will, or by an affidavit in the original will that includes or incorporates the attestation clause.” (Probate Code, § 8220(b).) The original will not having an affidavit of the witnesses including or incorporating the attestation clause, the petitioner must file proofs by at least one subscribing witness in order to have sufficient evidence proving the will before the court.

The petition requests the bond requirement be waived on the ground that all heirs/will beneficiaries have waived the bond requirement. There are no form Waivers of Bond by Heir or Beneficiary (Judicial Council Form DE-142/DE-111(A-3d).) executed by will beneficiaries Terry Williams, “Brian” and “Jason” in the court’s file. Absent that executed waiver being filed, bond will be set in the amount of \$259,900.

The hand printed will states that certain property is left to “Brian and Jason”. These persons are not identified as will beneficiaries in the petition and the proof of service does not declare that they were served notice of the hearing and a copy of the petition. This needs to be remedied.

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JULY 6, 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 HERBERT SHEARER PP20190068

- (1) Review Hearing Re: Status of Administration.**
- (2) Review Hearing Re: Inventory and Appraisal.**
- (3) Hearing Re: Bond Amount.**

It has been reported that the only asset of the estate to be administered is the final distribution from the Estate of Marie Shearer, PC-20170036 and that it is premature to file the Final Inventory and Appraisal at this time, because no distribution has been received from the Estate of Marie Shearer, PC-20170036.

The bond has not been set due to the lack of a final inventory and appraisal, which has not been filed since the last hearing. There is no final account and report in the court's file.

The court takes judicial notice that the Estate of Marie Shearer, PC-20170036 remains pending and, in fact, is set for a status of administration hearing on this same date.

TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JULY 6, 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.

8. ESTATE OF HENNICK PP-20210098

Review Hearing Re: Status of Administration.

Letters of Administration were issued on July 7, 2022. The Final Inventory and Appraisal was filed on January 28, 2022. 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, JULY 6, 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 MARIE SHEARER PP-20170036

(1) Review Hearing Re: Final Account and Report.

(2) Review Hearing Re: Status of Administration.

Letters of Administration were issued on April 12, 2017. The Final Inventory and Appraisal was filed on May 26, 2017. The 1st Interim Account and Report was approved and settled on October 3, 2018. The 2nd Interim Account and Report was approved and settled on June 26, 2019. The April 13, 2022 hearing was continued to July 6, 2022. There was no Final Account and Report in the court's file at the time this ruling was prepared.

TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JULY 6, 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.

10. ESTATE OF JOHNSON 22PR0111**Petition to Determine Succession to Real Property.**

The petitioners are the decedent's sons, who are also co-personal representatives of decedent's probate estate case in Hawaii where decedent resided until his death. The verified petition states that the decedent died testate on April 24, 2015 leaving real and personal property in El Dorado County and that no proceeding is being or has been conducted in this state for administration of the decedent's estate. A copy of the will admitted to probate in Hawaii was previously filed with the court on December 15, 2021. Notice of the hearing and a copy of the petition have been served by mail on decedent's heirs, the beneficiary entitled to the distribution, and the alternate beneficiary as mandated by Probate Code, §§ 1220 and 13153.

The specific bequests of the will provide in Article III, paragraphs A.2. through A.4. that petitioner Kevin Johnson was to be distributed the real and personal property listed in the Inventory and Appraisal, which was being present in El Dorado County.

If a decedent dies leaving real property in this state and the gross value of the decedent's real and personal property in this state does not exceed \$166,250, excluding the value of the property described in Probate Code, § 13050, and 40 days have elapsed since the death of the decedent, the successor of the decedent to an interest in a particular item of property that is real property may petition the court of the county in which the estate may be administered to determine that the petitioner has succeeded to that real property. The petition may also include an additional request that the court order that the petitioner has succeeded to the personal property described in the petition. (Probate Code, § 13151.) Such a petition may only be used where either the decedent's personal representative consents in writing to use of this

procedure or where no proceeding is being or has been conducted in this state for administration of the decedent's estate. (Probate Code, § 13150.) The petition declares that proceedings to administer the estate have not been commenced. Attached to the petition is an inventory and appraisal of the property specified in the petition, which was prepared by a probate referee as required by Probate Code, § 13152(b). The inventory and appraisal states the property is valued at \$64,000. The petition appears to be in order.

TENTATIVE RULING # 10: ABSENT OBJECTIONS OR OPPOSITION, THE PETITION IS GRANTED.

11. ESTATE OF SCOTT PP-20210149

Review Hearing Re: Inventory and Appraisal.

On March 9, 2022 the court granted the petition to admit the will to probate with authorization to administer the estate under the IAEA. An order to probate must be entered and Letters Testamentary submitted and issued.

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, JULY 6, 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 CHAPPELL 22PR0042

Review Hearing Re: Inventory and Appraisal.

On June 14, 2022 the personal representative file a partial inventory and appraisal of the estate's real property, which declared that it only represented a portion of the estate.

On that same date a supplemental Inventory and Appraisal was filed that listed and appraised a mutual fund account. The personal representative appears to have improperly appraised the value of the mutual fund account as an Attachment 1 asset. Unless it consists solely of a cash account, it appears to be an Attachment 2 asset that must be appraised by the probate referee. This needs to be corrected.

Except as otherwise provided by statute the probate referee shall appraise all property other than that appraised by the personal representative. (Probate Code, § 8902(b).)

“The personal representative shall appraise the following property, excluding items whose fair market value is, in the opinion of the personal representative, an amount different from the face value of the property: ¶ (a) Money and other cash items. As used in this subdivision, a "cash item" is a check, draft, money order, or similar instrument issued on or before the date of the decedent's death that can be immediately converted to cash. ¶ (b) The following checks issued after the date of the decedent's death: ¶ (1) Checks for wages earned before death. ¶ (2) Refund checks, including tax and utility refunds, and Medicare, medical insurance, and other health care reimbursements and payments. ¶ (c) Accounts (as defined in Section 21) in financial institutions. ¶ (d) Cash deposits and money market mutual funds, as defined in subdivision (b) of Section 9730, whether in a financial institution or otherwise, including a brokerage cash account. All other mutual funds, stocks, bonds, and other securities shall be appraised pursuant to Sections 8902 to 8909, inclusive. ¶ (e) Proceeds of life and accident

insurance policies and retirement plans and annuities payable on death in lump sum amounts.”
(Probate Code, § 8901.)

“Pending distribution of the estate, the personal representative may invest money of the estate in possession of the personal representative in any one or more of the following: ¶ * * *

(b) An interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant to Section 9.18 of Part 9 of Title 12 of the Code of Federal Regulations, the portfolios of which are limited to United States government obligations maturing not later than five years from the date of investment and to repurchase agreements fully collateralized by United States government obligations.” (Emphasis added.) (Probate Code, § 9730(b).)

The USAA Mutual Funds listed in the inventory and appraisal does not appear on its face to qualify as a Section 9730(b) mutual fund.

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, JULY 6, 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. MATTER OF THE MCCREARY SPECIAL NEEDS TRUST 22PR0127**Petition for Instructions and for Order Regarding Compromise of Litigation.**

On May 24, 2021 plaintiff Vicara Homeowners Association (HOA) filed a lawsuit against the trustee in her capacity as trustee of the McCreary Special Needs Trust as owner of a condominium (condo) in the HOA and against Trust beneficiary Cameron McCreary as the beneficial owner and tenant of that condo. The complaint asserts causes of action for breach of the HOA governing documents, nuisance, waste, declaratory relief, and trespass to chattels and seeks preliminary and permanent injunctive relief. The complaint alleges that these causes of action arise from trust beneficiary Cameron McCreary's alleged misconduct, which includes, but is not limited to, he and his family engaging in a willful and harassing course of conduct directed at other owners and residents and their children that seriously alarms, annoys, and threatens their safety that serves no legitimate purpose; parking his green van in the common area parking that is leaking noxious and offensive oil onto multiple parking spaces requiring significant cleaning; the van also leaked radiator fluid, coolant, and other unknown fluids in the parking lot; verbally threatening other owners and residents that has left them in fear for their safety; verbal harassment of unit owners; and chasing a resident down the street threatening him with a cane and yelling a threat of physical violence.

The trustee petitions the court pursuant to the provisions of Probate Code, §§ 17200(b)(1), (b)(5), (b)(6), and (b)(8) seeking a court order construing the trust, passing upon the proposed acts of the trustee in exercising discretionary powers to settle the Placer County Superior Court lawsuit; instructing the trustee; and granting power to the trustee. Specifically, the trustee requests in the initial petition and 1st supplement to the petition that the court authorize the trustee to pay for reasonable relocation and housing expenses in order for the beneficiary to

move from the subject condo if funds are safely available to do so in her discretion, and, as a result, the trustee shall not be responsible for any loss of public benefits or damages to the beneficiaries or otherwise; authorizing the trustee to pay in settlement the attorney's fees and costs of the HOA in the pending litigation involving the beneficiary if funds are safely available to do so in her discretion, and as a result, shall not be liable for any loss of public benefits or damages to the beneficiaries or otherwise; and to provide guidance to the trustee concerning the Trust's liability at the outcome of the lawsuit should it not be settled and if the Trust is liable for the actions of the Trust beneficiary.

Trust beneficiary Cameron McCreary responded to the petition: he has no objection to sale of the condo, provided there remains sufficient Trust funds to purchase a new condo or other similarly situated residence for him to reside in and that the trustee also be required to cover his moving expenses and costs to acquire the new property; the court needs to resolve the issue of whether the Trust's sale and purchase would be a tax deferred exchange which the beneficiary does not believe applies and if the Trust will have to pay taxes on a realized gain on the sale; the court must require the trustee to guarantee the sale of the condo will not interfere within his rights to receive the public benefits he currently receives; any settlement must take into account his need for knee replacement surgery and the recovery time after surgery, which will impact when he moves out; the settlement must include the HOA dismissing all outstanding charges and orders; and any payment of attorney fees and costs to the HOA must be limited to reasonable fees that do not deplete the Trust funds.

"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: ¶ (1) Determining questions of construction of a trust instrument. ¶ * * * (5) Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers. ¶ (6) Instructing the trustee... ¶ * * * (8) Granting powers to the trustee....” (Probate Code, §§ 17200(b)(1), (b)(5), (b)(6), and (b)(8).)

Probate Court Speculation as to Trust Liability in Underlying Civil Action

The court will not issue an advisory opinion as to the special need trust’s liability to the HOA arising from its ownership of the condominium within the HOA that the defendant trust beneficiary and his brother are allowed by the Trust to reside in. That is an issue to be resolved in the underlying litigation if it goes to trial and a final judgment.

Primary Residence Replacement and Move Out Expenses

The trustee seeks court authorization to pay reasonable relocation and housing expenses in order for the beneficiary to move from the subject condo if funds are safely available to do so in her discretion and the trustee shall not be responsible for any loss of public benefits or damages to the beneficiaries or otherwise. Under the circumstances presented, this would appear to be proper and reasonable.

Capital Gains Tax Deferred Exchange

The Trust beneficiary contends the court needs to resolve the issue of whether the Trust’s sale and purchase would be a tax deferred exchange which the beneficiary does not believe applies and if the Trust will have to pay taxes on a realized gain on the sale.

The court will not issue an advisory opinion as to the tax consequences that may or may not occur when the condo is sold and a replacement residence is purchased.

Loss or Reduction of Government Benefits

The Trust is embroiled in litigation arising from the trust beneficiary's alleged misconduct merely because it purchased a condo in order to provide the trustee with a residence. The alleged misconduct violated the governing documents the Trust was allegedly bound to adhere to as a unit owner. In order to extricate itself from the litigation, protect the Trust's assets for the benefit of the trust beneficiary, and potentially extricate the beneficiary as well, the Trust will be required to sell a capital asset, possibly purchase another residence for the beneficiary, incur moving costs, and possibly incur additional tax liability. Under the totality of the circumstances presented, the court will not make the trustee the guarantor of the trust beneficiary's government benefits and will instead order that the trustee shall not be responsible for any loss of public benefits or damages to the beneficiaries or otherwise due to the required sale, purchase, and payment of the beneficiary's relocation expenses.

Trust Beneficiary Medical Recovery Time Prior to Moving from Condo

The respondent Trust beneficiary states he needs immediate knee replacement surgery, which will require him to recover in the condo and proposes that any settlement take into account his recovery time in order to avoid additional physical stress of moving from the condo.

This is beyond the scope of the instant petition procedure. The court has no authority to dictate changes to the settlement proffered in the litigation taking place in Placer County. As a defendant in that action, the Trust beneficiary must bring up these concerns in the settlement negotiations with the plaintiff HOA.

The court can not issue any instructions relating to these issues.

Dismissal of All Outstanding Criminal Charges Against the Trust Beneficiary and All Outstanding Restraining Orders

The Trust beneficiary wants as part of the settlement that the HOA cooperate in dismissing all outstanding restraining orders and criminal charges filed against him as a condition to any settlement.

This is beyond the scope of the instant petition procedure. The court has no authority to dictate changes to the settlement proffered in the litigation taking place in Placer County. As a defendant in that action, the Trust beneficiary must bring up these concerns in the settlement negotiations with the plaintiff HOA regarding any civil restraining orders in place and the issue of cooperation related to the criminal charges. As for criminal charges, it is the prosecuting District Attorney's Office that has jurisdiction to determine whether to pursue or drop those criminal charges and the Trust beneficiary must raise that issue with that District Attorney's Office as well.

The court can not issue any instructions relating to these issues.

Amount of Attorney Fees and Costs of the HOA's Lawsuit

The trustee seeks a court order authorizing the trustee to pay in settlement attorney's fees and costs of the HOA in the pending litigation involving the beneficiary if funds are safely available to do so in her discretion, and as a result, shall not be liable for any loss of public benefits or damages to the beneficiaries or otherwise.

Under the totality of the circumstances presented, this is a reasonable course of action to continue to address the special needs of the beneficiary while at the same time safeguard the assets of the Trust so that they are available to meet the beneficiary's needs in the future.

In summary, the petition is granted as described in the text of this ruling.

TENTATIVE RULING # 13: THE PETITION IS GRANTED AS DESCRIBED IN THE TEXT OF THE RULING.

14. ESTATE OF BONSER 22PR0097

(1) Review Hearing Re: Letters of Administration.

(2) Review Hearing Re: Inventory and Appraisal.

The court was advised at the hearing on June 8, 2022 that the parties had reached a settlement and it was anticipated that petitioner Marina Bonser would be appointed administrator. The matter was continued to July 9, 2022 and a hearing on the filing of the Inventory and Appraisal was set for that same date. The parties were to submit an order with the settlement. The order and settlement were not in the court's file at the time this ruling was prepared.

Should petitioner be appointed personal representative upon presentation of the settlement agreement, the court is inclined to require bond in the amount of \$175,000 be posted as requested.

TENTATIVE RULING # 14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JULY 6, 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. ESTATE OF SANCHEZ PP-20200103

- (1) Review Hearing Re Inventory and Appraisal.**
- (2) Review Hearing Re: Status of Administration.**
- (3) Hearing Re: Allowance or Rejection of Co-Executor Sandra Woodring's Creditor's Claim.**
- (4) Petition for Order Confirming Validity of Settlement Agreement.**

Review Hearing Re: Inventory and Appraisal.

Letters Testamentary were issued on September 23, 2020. Partial Inventory and Appraisal number one was filed on March 31, 2021. At the hearing on June 23, 2021 co-executor Woodring's counsel stated the March 31, 2021 Inventory and Appraisal is a final inventory and appraisal. Co-Executor Covey's counsel disagreed and stated that he believed there were more assets to be inventoried and appraised. There is no Final Inventory and Appraisal in the court's file.

Review Hearing Re: Status of Administration.

There appears to remain disputes between the two co-executors concerning the assets of the estate and whether co-executor Woodring loaned \$25,000 to decedent to purchase her home in 1999.

Hearing Re: Allowance or Rejection of Co-Executor Sandra Woodring's Creditor's Claim.

On November 4, 2020 co-executor Woodring filed a verified claim asserting decedent owed her \$25,000 representing a loan she made to decedent that was used to purchase her home in Cameron Park. Attached to the verified Judicial Council Form Creditor's Claim is a statement wherein she describes the transaction related to the purchase of the home on Bow Mar Court in Cameron Park. She states: she loaned her parents, Emilio and Gloria Sanchez, over

\$25,000 to purchase a condo on Bow Mar Court in Cameo Park; it was purchased on “September 13, 2099” [sic] in Ms. Woodring’s name, because her parents could not qualify for a loan due to their bankruptcy filing; the property became her parents primary residence; on April 9, 2003 she grant deeded the property to her parents to allow them to have tax write offs; and her parents lived from month to month and never had the money to pay her back.

Attached to the verified claim and statement are authenticated documents consisting of the following: an original check, dated September 13, 1999, payable to “World Savings for Cash” in the amount of \$25,078.54 with the notation on the check that it was for “Bow Mar Ct”, which paid for a money order issued by World Savings Bank; the carbon copy of the World Savings Bank money order, dated September 13, 1999, made payable to Placer Title Company in the amount of \$25,078.54; a receipt, dated September 13, 1999, from Placer Title Company for \$25,078.54 received from co-executor Woodring; a grant deed, dated September 14, 1999, which conveyed the subject real property to co-executor Woodring, a unmarried woman; and the original El Dorado County real property bill for the subject real property for the tax year July 1, 2004 to June 30, 2005, which states that the Bow Mar Court property owners were Emilio Sanchez and Flora Sanchez.

Co-Executor Covey opposes the claim and requests that the court reject the claim on the following grounds: the two co-executors disagree on the validity of the creditor claim; the claim must be rejected as it does not provide documentation or sufficient information to support a conclusion that the decedent entered into a loan agreement with Ms. Woodring; co-executor Covey is unaware of the existence of a loan agreement; and there is no cotemporaneous signature or other writing by decedent or co-executor Woodring indicating either a loan from her to the decedent or that the amounts paid by co-executor Woodring for decedent’s benefit would be repaid.

“Notwithstanding any other provision of this part, whether the personal representative has been granted full authority or limited authority, a personal representative who has obtained authority to administer the estate under this part is required to obtain court supervision, in the manner provided in this code, for any of the following actions: ¶ * * * (8) Allowance, payment, or compromise of a claim of the personal representative, or the attorney for the personal representative, against the estate...” (Probate Code, § 10501(a)(8).)

“If the personal representative or the attorney for the personal representative is a creditor of the decedent, the clerk shall present the claim to the court or judge for approval or rejection. The court or judge may in its discretion require the creditor to file a petition and give notice of hearing.” (Probate Code, § 9252(a).)

“If the court or judge approves the claim, the claim is established and shall be included with other established claims to be paid in the course of administration.” (Probate Code, § 9252(b).)

“If the court or judge rejects the claim, the personal representative or attorney may bring an action against the estate. Summons shall be served on the judge, who shall appoint an attorney at the expense of the estate to defend the action.” (Probate Code, § 9252(c).)

Co-Executor Covey has not submitted any evidence to support her request for the court to reject the creditor’s claim. There is evidence before the court in the form of the verified claim form and the incorporated statement and authenticated attached original documentation that supports the claim that co-executor Woodring loaned over \$25,000 for the purchase of the Bow Mar Court residence, title to the property was initially taken in Ms. Woodring’s name for purposes of obtaining a loan, and the property was eventually deeded to her parents for tax purposes. There is no evidence that the over \$25,000 paid for the residence was intended to be anything other than a loan to be repaid when her parents could afford repayment and that

they were never able financially to repay their daughter for fronting the money for their residence.

At the hearing on September 22, 2021 the parties presented oral argument, the parties stated they would file an 850 petition, the court ordered that the creditor's claim was rejected as of that date, and the court continued the hearings on the two review hearings and this matter to January 5, 2022.

At the hearing on January 5, 2022 the court continued the hearings on these matters to April 20, 2022 for receipt of an agreement.

Petition for Order Confirming Validity of Settlement Agreement and Instructing Co-Executors to Comply with the Terms of the Settlement Agreement.

On April 12, 2022 co-executor Sharon Covey filed a petition to confirm the validity of a purported settlement agreement executed by beneficiaries/co-executors Sharon Covey and Sandra Woodring and to compel compliance with the terms of the settlement agreement.

The proofs of service declares that the petition was served on the interested persons by mail on April 19, 2022 and the notice of the hearing was served on the interested persons by mail on April 19, 2022.

At the time this ruling was prepared, there was no response, objections, or opposition to the petition in the court's file.

The verified petition states: the two co-executors had disagreements of what to include in the Inventory and Appraisal of the estate's assets and a creditor's claim that the court rejected, which co-executor Woodring indicated she would pursue a separate action on the alleged debt; Ms. Woodring's counsel submitted a settlement offer to petitioner on October 12, 2021 with the terms specified in paragraph 20 of the petition; Ms. Woodring's counsel stated that they needed to get back to her no later than October 19, 2021; petitioner's counsel got back to Ms.

Woodring's counsel on October 15, 2021 with a question about extraordinary fees; on October 27, 2021 Ms. Woodring's counsel asked for a response to the settlement offer by stating "Should I assume your client has rejected my client's offer without any response? Please advise so I can advise my client how to proceed."; petitioner's counsel responded on October 28, 2021 that the offer was communicated to his client and hoped to have a response later in the day or tomorrow; there was no response from Ms. Woodring's counsel that the settlement offer had been rescinded or withdrawn; on November 1, 2021 petitioner's counsel advised Ms. Woodring's counsel that he spoke with his client that day regarding the offer and that she will have a decision made and communicate to counsel by tomorrow; Ms. Woodring's counsel did not respond or otherwise convey the offer had been withdrawn or rescinded; on November 2, 2021 petitioner's counsel communicated petitioner's acceptance of the settlement offer; nine days after that acceptance Ms. Woodring's counsel took the position that the offer expired on October 19, 2021 as stated in the October 12 2021 "get back to me no later than 5p on October 19, 2021" email and they do not have an agreement.

Petitioner argues: the co-executors have authority to compromise a claim against the estate and the power to contract; the settlement agreement was not automatically rescinded or withdrawn on October 19, 2021; the legal principles applicable to contracts also apply to settlement agreements; while a settlement offer may be revoked any time prior to communication of acceptance, it can not be revoked after acceptance; revocation of an offer occurs by communicating notice of revocation or by affirmative act or expression prior to acceptance, or the lapse of the time prescribed in the proposal for acceptance, or if no time is specified, the lapse of a reasonable time without communication of acceptance; under the circumstances, October 19, 2021 was not a date certain that was set for revocation of the offer if not accepted by that date; Ms. Woodring's counsel's October 27, 2021 communication to

petitioner's counsel on October 27, 2021 asking if she was to presume the offer was rejected confirms that the offer was still open; the settlement offer was accepted within a reasonable time prior to the attempt to revoke the offer, therefore the settlement agreement is valid and binding.

“In all cases where no other procedure is provided by statute, upon petition of the personal representative, the court may authorize and instruct the personal representative, or approve and confirm the acts of the personal representative, in the administration, management, investment, disposition, care, protection, operation, or preservation of the estate, or the incurring or payment of costs, fees, or expenses in connection therewith. Section 9613 does not preclude a petition for instructions under this section.” (Probate Code, § 9611(a).)

“On petition of any interested person, and upon a showing that if the petition is not granted the estate will suffer great or irreparable injury, the court may direct the personal representative to act or not to act concerning the estate. The order may include terms and conditions the court determines are appropriate under the circumstances.” (Probate Code, § 9613(a).)

“...Section 9613 permits the court to direct the personal representative to act or not to act concerning the estate. The showing of irreparable injury under Section 9613 is analogous to the irreparable injury that must be shown for injunctive relief. Cf. Code Civ.Proc. § 526(2); 6 B. Witkin, California Procedure Provisional Remedies § 254, at 221 (3d ed. 1985 & Supp.1988). The existence of a remedy under Section 9613 does not limit the right of a personal representative to petition for instructions. See Section 9611. As to orders and transactions affecting property, see Sections 7260-7263. As to orders made, or actions taken, before July 1, 1988, and matters pending on July 1, 1988, see Section 9645. As to the application of any amendments made after that date, see Section 3.” (Law Revision Commission Comment to Probate Code, § 9613.)

“Unless this chapter or some other applicable statute requires court authorization or approval, if it is to the advantage of the estate, the personal representative may do any of the following without court authorization, instruction, approval, or confirmation: ¶ (1) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate, including the giving of a covenant not to sue. ¶ (2) Extend, renew, or in any manner modify the terms of an obligation owing to or in favor of the decedent or the estate. ¶ (3) Release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.” (Probate Code, § 9830(a).)

“The personal representative has the power to do all of the following: ¶ (a) Allow, pay, reject, or contest any claim by or against the estate. ¶ (b) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate. ¶ (c) Release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible. ¶ (d) Allow a claim to be filed after the expiration of the time for filing the claim.” (Probate Code, § 10552.)

“(a) The personal representative has the power to manage and control property of the estate, including making allocations and determinations under the Uniform Principal and Income Act, Chapter 3 (commencing with Section 16320) of Part 4 of Division 9. Except as provided in subdivision (b), the personal representative may exercise this power without giving notice of proposed action under Chapter 4 (commencing with Section 10580). ¶ (b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) in any case where a provision of Chapter 3 (commencing with Section 10500) governing the exercise of a specific power so requires.” (Probate Code, § 10531.)

“(a) The personal representative has the power to enter into a contract in order to carry out the exercise of a specific power granted by this part, including, but not limited to, the powers

granted by Sections 10531 and 10551. Except as provided in subdivision (b), the personal representative may exercise this power without giving notice of proposed action under Chapter 4 (commencing with Section 10580).” (Probate Code, § 10532(a).)

Clearly the co-executors/beneficiaries were authorized to compromise and settle the dispute between themselves and creditor’s claim of co-executor Woodring that decedent owed her \$25,000 representing a loan she made to decedent that was used to purchase her home in Cameron Park.

“A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.” (Civil Code, § 1586.)

“A proposal is revoked by any of the following: ¶ (a) By the communication of notice of revocation by the proposer to the other party, in the manner prescribed by Sections 1581 and 1583, before his or her acceptance has been communicated to the former. ¶ (b) By the lapse of the time prescribed in the proposal for its acceptance or, if no time is prescribed, the lapse of a reasonable time without communication of the acceptance. (Civil Code, §§ 1587(a) and (b).)

Absent opposition or objections, it appears under the totality of circumstances stated in the verified petition that the offer did not expire on October 19, 2021 and that the offer was not revoked prior to its acceptance by petitioner, which was within a reasonable time after the offer was made.

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 # 15: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, JULY 6, 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.