

1. ESTATE OF ALMAZAN 21PR0040

1st and Final Report and Petition for Final Distribution on Waiver of Account.

TENTATIVE RULING # 1: THE PETITION IS GRANTED. FEES ARE FIXED AND PAYMENT DIRECTED AS REQUESTED. FINAL DISTRIBUTION IS ORDERED AS REQUESTED. THE COURT CONTINUES THE REVIEW HEARING RE: STATUS OF ADMINISTRATION FROM 8:30 A.M. ON WEDNESDAY, FEBRUARY 1, 2023 TO 8:30 A.M. ON MONDAY, FEBRUARY 6, 2023 AND ORDERS THE LOCATION BE CHANGED TO DEPARTMENT NINE AT WHICH TIME THE COURT ANTICIPATES THAT AN EX PARTE PETITION FOR FINAL DISCHARGE (JUDICIAL COUNCIL FORM DE-295.) WILL BE SUBMITTED THAT STATES THE ORDER OF FINAL DISTRIBUTION OR A PERSONAL REPRESENTATIVE'S DEED WAS RECORDED CONCERNING THE DISTRIBUTION OF THE REAL PROPERTY AND THAT NO RECEIPTS OF DISTRIBUTION ARE REQUIRED, BECAUSE THE PERSONAL REPRESENTATIVES ARE THE SOLE DISTRIBUTEES.

2. ESTATE OF FOWLER PP-20210174

Review Hearing Re: Inventory and Appraisal.

This hearing is trailing the hearing in Conservatorship of Fowler, Case Number PP-20200089.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 9, 2022 IN DEPARTMENT NINE. 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 VERRY 21PR0056

Review Hearing Re: Inventory and Appraisal.

Letters of Administration were issued on July 27, 2022. Partial Inventory and Appraisal Number 1 was filed on August 2, 2022. There is no Final Inventory and Appraisal in the court's file.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 9, 2022 IN DEPARTMENT NINE. 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 MARK PP-20210155

Review Hearing Re: Status of Administration.

Letters Testamentary were issued on November 12, 2021. The Final Inventory and Appraisal was filed on June 21, 2022. There is no Final Account and Request for Order of Final Distribution in the court's file.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 9, 2022 IN DEPARTMENT NINE. 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 MOORE 22PR0156

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

(2) Review Hearing Re: Inventory and Appraisal.

1st and Final Account and Petition for Final Distribution.

The 1st and Final Account is allowed, settled, approved, and confirmed. The petition for final distribution is granted.

Review Hearing Re: Inventory and Appraisal.

The final inventory and appraisal was filed on July 20, 2022

TENTATIVE RULING # 5: THE FINAL INVENTORY AND APPRAISAL HAVING BEEN FILED ON JULY 20, 2022, THE REVIEW HEARING RE: INVENTORY AND APPRAISAL IS DROPPED FROM THE CALENDAR. 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 ADVANCES THE REVIEW HEARING RE: STATUS OF ADMINISTRATION TO 8:30 A.M. ON MONDAY, FEBRUARY 6, 2023 IN DEPARTMENT NINE AT WHICH TIME THE COURT ANTICIPATES THAT THE RECEIPT OF FINAL DISTRIBUTION EXECUTED BY THE TRUSTEE OF THE ELAINE J. MOORE AND JERRY G. MOORE FAMILY TRUST WILL HAVE BEEN FILED AND AN EX PARTE PETITION FOR FINAL DISCHARGE (JUDICIAL COUNCIL FORM DE-295.) SUBMITTED.

6. ESTATE OF HOGUE PP-20210209

Review Hearing Re: Inventory and Appraisal.

Letters of Administration were issued on January 12, 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, NOVEMBER 9, 2022 IN DEPARTMENT NINE. 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 MCKINNEY PP-20190015

Review Hearing Re: Status of Administration.

The order of final distribution was entered on July 13, 2022. There are no receipts of distribution in the court's file and no ex parte Petition for Final Discharge (Judicial Council Form DE-295.) in the court's file.

TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 9, 2022 IN DEPARTMENT NINE. 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 IVERSON 22PR0205**Spousal Property Petition.**

The decedent's surviving spouse seeks a determination that certain described accounts held solely in decedent's name at Chase Bank were community property, which passed to the surviving spouse by statute through intestate succession (See Probate Code, § 6401(a)). The verified petition states that the decedent died intestate on June 7, 2022.

In general, when a husband or wife dies intestate leaving property that passes to the surviving spouse under Probate Code, § 6401, or dies testate and by his or her will devises all or a part of his or her property to the surviving spouse, the property passes to the survivor subject to the provisions of Chapter 2 (commencing with Section 13540) and Chapter 3 (commencing with Section 13550), and no administration is necessary. (Probate Code, § 13500.)

Notice of the hearing of a spousal property petition must be provided to each person listed in Probate Code, § 1220, each person named as executor in any will of the deceased spouse, all devisees and known heirs of the deceased spouse; all persons interested in a trust if the petitioner is the trustee of a trust that is a devisee under the will; and to the Attorney General if the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will of the deceased spouse and the will involves or may involve either a testamentary trust of property for charitable purposes other than a charitable trust with a designated trustee, who is a resident of this state, or a devise for a charitable purpose without an identified devisee or beneficiary. (Probate Code, § 13655.) The verified petition lists four persons entitled to service of notice of the hearing and a copy of the petition. There was no proof of service of notice of this hearing and a copy of the petition on

the interested persons in the court's file at the time this ruling was prepared. Therefore, the court can not reach the merits of the petition.

TENTATIVE RULING # 8: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 9, 2022 IN DEPARTMENT NINE. 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 RUMSEY 22PR0029

(1) Petition to Determine Title to Real Property and Require Transfer of Real Property.

(2) Petition to Admit Will to Probate.

Petition to Determine Title to Real Property and Require Transfer of Real Property.

The verified petition alleges: the petition concerns real property identified as 3867 Azure Avenue, South Lake Tahoe, CA, APN 029-103-007; settlors George Rumsey and Julianne Rumsey acquired four adjoining parcels in South Lake Tahoe; the parcels were sold in two sets of pairs, Parcels A and B and Parcels C and D; Parcel A is the subject property; Parcels A and B were acquired by the Rumsey's in 1973 and 1974 respectively as evidenced by petitioners' Exhibits 2 and 3; when the revocable Trust was established in 1990, the settlors Rumsey executed a Trust transfer deed intended to transfer both parcels A and B into the Trust estate; the Trust transfer deed prepared by the attorney included the wrong legal description as it only included the description of Parcel B across the street; after George Rumsey passed away in 1996 Julianne Rumsey continued as sole trustee of the Trust; on February 4, 2021 trustee Julianne Rumsey executed a quitclaim deed to petitioners, which was intended to transfer all of her interests, title, and interest in the subject real property to them in 25% shares; the property conveyed/transferred was expressly identified in the quitclaim deed as 3867 Azure Avenue, South Lake Tahoe, CA, APN 029-103-007, however, the legal description was incorrect (See Petitioner's Exhibit 7.); the February 4, 2021 quitclaim deed was intended to transfer title to parcel A prior to California's newly passed proposition 19 was to take effect; Julianne Rumsey passed away on March 26, 2021; and the missing legal description of Parcel A was not discovered until petitioners commenced administration of the Trust.

Petitioners argue: the legal principles set forth in Ukkestad v. RBS Asset Finance, Inc. (2015) 235 Cal.App.4th 156 control, because there was much more than a general assignment of the property to the Trust estate as there was a recorded quitclaim deed that the settlor/trustee executed that specified the quitclaim transfer of 3867 Azure Avenue, South Lake Tahoe, CA, APN 029-103-007 to petitioners from what could only be the Trust estate.

Petitioners pray for an order determining the legal, equitable, and record title to 3867 Azure Avenue, South Lake Tahoe, CA, APN 029-103-007; confirming that trustee Julianne Rumsey's February 4, 2021 quitclaim deed transferred to petitioners the right, title, interest, legal and equitable, as well as record title, to the property generally known as 3867 Azure Avenue, South Lake Tahoe, CA, APN 029-103-007; and confirming ownership of the subject property to be held by petitioners in 25% shares.

"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 trustee or any interested person may file a petition to determine ownership of real or personal property and to obtain an order directing the conveyance or transfer real or personal property in any of the following cases: "(A) Where the trustee is in possession of, or holds title to, real or personal property, and the property, or some interest, is claimed to belong to another. (B) Where the trustee has a claim to real or personal property, title to or possession of which is held by another. (C) Where the property of the trust is claimed to be subject to a creditor of the settlor of the trust." (Probate Code, § 850(a)(3).)

"Except as provided in Sections 853 and 854, if the court is satisfied that a conveyance, transfer, or other order should be made, the court shall make an order authorizing and directing the personal representative or other fiduciary, or the person having title to or

possession of the property, to execute a conveyance or transfer to the person entitled thereto, or granting other appropriate relief.” (Probate Code, § 856.)

“The order is prima facie evidence of the correctness of the proceedings and of the authority of the personal representative or other fiduciary or other person to make the conveyance or transfer.” (Probate Code, § 857(a).) “After entry of an order that the personal representative, other fiduciary, or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order.” (Probate Code, § 857(b).)

Where the Trust Instrument or another writing states that all of settlor’s right, title and interest to all of his or her real property is included in the Trust’s assets, and it is possible by resorting to extrinsic evidence to determine that the settlor held title to the real property that is sought to be confirmed as a Trust asset, the statute of frauds creates no bar to a petition for an order confirming that the real property is part of the Trust’s assets. (See Ukkestad v. RBS Asset Finance, Inc. (2015) 235 Cal.App.4th 156, 164.)

Where the petition to determine ownership of property involves a Trust, notice of the hearing and a copy of the petition must be served at least 30 days prior to the hearing on the trustee and each person claiming an interest in, or having title to or possession of, the subject property in the same manner as service of a summons and complaint and by mail to all beneficiaries and the Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General. (Probate Code, §§ 851(a)(2), 851(b)(3) and 17203(a).)

The proof of service declares that the interested persons were served notice of the hearing and the petition by email on August 1, 2022. The persons included in the email service was the trustee, Peter Rumsey, who purportedly has possession of the subject real property as there

was a sufficient declaration of that property as an asset of the Trust and due to the error in description of one parcel of real property in the recorded deeds, including the quitclaim deed concerning the subject property, there is doubt as to the transfer of that parcel of property by the now deceased surviving settlor/trustee on February 4, 2021. Paragraph 35 of the petition did not provide the email addresses of each of the interested persons, therefore, the court can not confirm whether the notice and petition were delivered to the interested persons at the correct email addresses. However, that need not be corrected, because none of them were required to be served notice of the proceeding.

While the trustee would be normally be required to be served personally, as stated above, the trustee is one of the petitioners and, therefore, no notice is required. In addition, the remaining interested persons are also petitioners, therefore, they need not be provided notice. (See Verified Petition, Paragraph 26.)

“If a person is required to give notice, the person required to give the notice need not give the notice to himself or herself or to any other person who joins in the petition.” (Probate Code, § 1201.)

The next matter to be resolved is the issue of whether this petition has been commenced in the proper venue.

Proper Venue

The verified petition admits in paragraph 26 that Peter Rumsey is the successor trustee of the Trust and paragraph 35 states his address is in Oakland, CA,

“(a) The superior court having jurisdiction over the trust pursuant to this part has exclusive jurisdiction of proceedings concerning the internal affairs of trusts. ¶ (b) The superior court having jurisdiction over the trust pursuant to this part has concurrent jurisdiction of the following: ¶ (1) Actions and proceedings to determine the existence of trusts. ¶ (2) Actions and

proceedings by or against creditors or debtors of trusts. ¶ (3) Other actions and proceedings involving trustees and third persons.” (Probate Code, § 17000.)

“(a) 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).)

“...The list of grounds for a petition concerning the internal affairs of a trust under subdivision (b) is not exclusive and is not intended to preclude a petition for any other purpose that can be characterized as an internal affair of the trust...” (Law Revision Commission Comments to 1990 Enactment of Probate Code, § 17200.)

Internal affairs of the Trust is reasonably construed to include a settlor/trustee conveying title to Trust property to beneficiaries in the exercise of the settlor’s/trustee’s authority over the Trust assets during the life of the settlor.

“The proper county for commencement of a proceeding pursuant to this division is either of the following: ¶ (1) In the case of a living trust, the county where the principal place of administration of the trust is located.” (Probate Code, § 17005(a)(1).)

“The principal place of administration of the trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust.” (Probate Code, § 17002(a).)

“If the principal place of administration of the trust cannot be determined under subdivision (a), it shall be determined as follows: ¶ (1) If the trust has a single trustee, the principal place of administration of the trust is the trustee’s residence or usual place of business.” (Probate Code, § 17002(b)(2).)

“If a living trust has no trustee, the proper county for commencement of a proceeding for appointing a trustee is the county where the trust property, or some portion of the trust property, is located.” (Probate Code, § 17005(b).)

It appears that Alameda County is the proper venue for this proceeding concerning Trust property. Petitioners need to explain why El Dorado County is the proper venue.

Petition to Admit Will to Probate.

The verified petition inconsistently states that decedent died in Berkeley, CA a resident of El Dorado County and that the address of decedent’s residence at the time of death was in Berkeley, CA. (See Petition, paragraphs 3.a.(1) and 3.c.)

“If the decedent was domiciled in this state at the time of death, the proper county for proceedings concerning administration of the decedent’s estate is the county in which the decedent was domiciled, regardless of where the decedent died.” (Probate Code, § 7051.)

If the Berkeley address is truly the decedent’s residence at the time of death, then El Dorado County is the improper venue for probate administration. This needs to be explained.

Although the petitioner filed a notice of lodging the original will, the court is unable to verify that the original will was actually lodged with the court. This needs to be addressed.

The will leaves the estate to the Rumsey 1990 Revocable Trust. Paragraph 26 of the Petition to Determine Title to Real Property and Require Transfer of Real Property to be heard concurrently with this petition identifies Peter Rumsey as the successor trustee of the subject Trust and the executor of the will. Peter Rumsey is not required to be provided notice as he is the petitioner seeking to admit the will to probate.

“If a person is required to give notice, the person required to give the notice need not give the notice to himself or herself or to any other person who joins in the petition.” (Probate Code, § 1201.)

TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 9, 2022 IN DEPARTMENT NINE. 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 GENOUD PP-20190251

Petition for Final Distribution on Waiver of Account.

TENTATIVE RULING # 10: THE PETITION IS GRANTED. FEES ARE FIXED AND PAYMENT ALLOWED AS REQUESTED. FINAL DISTRIBUTION IS ORDERED AS REQUESTED, INCLUDING PAYMENT OF \$19,000 FROM DOUGLAS DRASHER'S SHARE OF THE ESTATE TO ASSIGNEE PROBATE ADVANCE, LLC. THE COURT SETS A REVIEW HEARING RE: STATUS OF ADMINISTRATION FOR 8:30 A.M. ON MONDAY, FEBRUARY 20, 2023 IN DEPARTMENT NINE 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.

11. ESTATE OF CHAPPELL 22PR0042

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

(2) Review Hearing Re: Inventory and Appraisal.

Report on Account and Petition for Final Distribution.

“The personal representative shall file a final account and petition for an order for final distribution of the estate when the estate is in a condition to be closed.” (Probate Code, § 10951.)

“An account shall include both a financial statement and a report of administration as provided in Chapter 4 (commencing with Section 1060) of Part 1 of Division 3, and this section.” (Probate Code, § 10900(a).)

“This chapter governs all accounts to be filed with the court. Except as specifically provided elsewhere in this code, or unless good cause is shown therefore, no information in addition to that required in this chapter need be in an account.” (Probate Code, § 1060.)

The verified report includes a summary of the account at paragraph 14. Unfortunately there are no account schedules attached as required by law.

“The summary shall be supported by detailed schedules showing the following: ¶ (a) Receipts, showing the nature or purpose of each item, the source of the receipt, and the date thereof. ¶ (b) Disbursement, including the nature or purpose of each item, the name of the payee, and the date thereof. ¶ (c) Net income or loss from a trade or business, which shall be sufficient if it provides the information disclosed on Schedule C or F of the federal income tax return. ¶ (d) Calculation of gains or losses on sale or other disposition. ¶ (e) Distributions of cash or property to beneficiaries, ward or conservatee, showing the date and amount of each,

with the distribution of property shown at its carry value. ¶ (f) Itemized list of property on hand, describing each item at its carry value.” (Probate Code, § 1062.)

The petition in paragraph 24 refers to Schedule G as setting forth the calculation of statutory fees for ordinary compensation, a billing statement to support the claim for extraordinary fees, and expenses to reimburse the personal representative’s counsel for costs advanced. There is no Schedule G attached to the petition.

The court can not rule on the merits of the account and report without the mandated schedules.

Paragraph 7 of the report and account regarding creditor claims is blank. The verified report must include the specific information required by Probate Code, §§ 10900(b)(2) and 10900(b)(3).

“(b) The statement of liabilities in the report of administration shall include the following information: ¶ ... (2) Creditor claims filed, including the date of filing the claim, the name of the claimant, the amount of the claim, and the action taken on the claim. ¶ (3) Creditor claims not paid, satisfied, or adequately provided for. As to each such claim, the statement shall indicate whether the claim is due and the date due, the date any notice of rejection was given, and whether the creditor has brought an action on the claim. The statement shall identify any real or personal property that is security for the claim, whether by mortgage, deed of trust, lien, or other encumbrance.” (Probate Code, §§ 10900(b)(2) and 10900(b)(3).)

The court can not allow, settle and approve an accounting that does not meet the statutory requirements.

There is no Inventory and Appraisal in the Court’s file that states it is a final inventory and appraisal. All of the inventories and appraisals in the court’s file declare that only a portion of the estate assets reflected in the inventory and appraisal. (See Inventory and Appraisal filed on

June 14, 2022; Supplemental Inventory and Appraisal filed on June 14, 2022; and Supplemental Inventory and Appraisal filed on September 15, 2022.) The estate is not in a condition to be closed where there is no final inventory and appraisal in the file.

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 assets.

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.

The issue regarding appraisal of the mutual fund was resolved by the filing of a Supplemental Inventory and Appraisal on September 15, 2022 wherein the probate referee appraised the value of the mutual fund accounts. Unfortunately, there is no Inventory and Appraisal in the Court’s file that states it is a final inventory and appraisal. All of them in the court’s file declare that only a portion of the estate assets is reflected in the inventory and appraisal. A Final Inventory and Appraisal must be filed stating that all property of the estate that has come to the personal representative’s knowledge and possession has been identified and appraised.

TENTATIVE RULING # 11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 9, 2022 IN DEPARTMENT NINE. 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. MATTER OF THE ISAAC YOON FIRST PARTY SPECIAL NEEDS TRUST PP-20210061

1st Account and Report of Trustee.

TENTATIVE RULING # 12: ABSENT OBJECTIONS, THE 1ST ACCOUNT AND REPORT OF THE TRUSTEE IS ALLOWED, SETTLED, APPROVED AND CONFIRMED. THE COURT FIXES AND ALLOWS FEES AND REIMBURSEMENT OF COSTS AS REQUESTED. THE COURT FURTHER ORDERS THAT THE BOND AMOUNT BE INCREASED BY \$73,000 FOR A TOTAL BOND AMOUNT OF \$165,000. THE COURT SETS A REVIEW HEARING RE: POSTING ADDITIONAL BOND FOR 8:30 A.M. ON MONDAY, FEBRUARY 20, 2023 IN DEPARTMENT NINE AND A REVIEW HEARING RE: 2ND ACCOUNT AND REPORT OF TRUSTEE FOR 8:30 A.M. ON WEDNESDAY, NOVEMBER 6, 2024 IN DEPARTMENT NINE.

13. MATTER OF THE WILLIAM AND GRACE HOOD TRUST PP-20210006

Review Hearing Re: Status of Sale of House.

On March 3, 2021 the court granted a petition to appoint a successor trustee; set bond in the amount of \$550,000 to be posted within ten days, or to deposit the proceeds from the sale of the house into a blocked account; and set this review hearing re: status of sale of house.

The bond was posted on April 8, 2021. On July 7, 2021 the hearing was continued to September 22, 2021. On September 21, 2021 the trustee's counsel filed a declaration wherein he explained that just after title issues concerning the property were resolved, the Caldor fire burned across the area near the property, which prevented access to the property until very recently; and the listing realtor stated he was able to get back to the property to take pictures and the property will be actively listed for sale with a list price of \$795,000.

On February 2, 2022 the court granted the trustee's petition confirming that certain real property is an asset of the Trust.

On June 8, 2022 the court continued the hearing to November 9, 2022. The court has not received any further word about the sale of the house.

TENTATIVE RULING # 13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 9, 2022 IN DEPARTMENT NINE. 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.

14. MATTER OF THE HAROLD AND CAMILLE T. KNIGHT 1999 TRUST PP-20140020

1st Account and Report of Successor Trustee.

TENTATIVE RULING # 14: ABSENT OBJECTIONS, THE 1ST ACCOUNT AND REPORT OF SUCCESSOR TRUSTEE IS ALLOWED, SETTLED, APPROVED AND CONFIRMED.

15. MATTER OF THE EDNA EARL REVOCABLE LIVING TRUST 22PR0116

Review Hearing.

At the conclusion of the court trial on October 19, 2022, the court set the fair market value of the home as \$630,000. The court also directed the following: a statement of decision be prepared by counsel for the Morgans, which is to be served on counsel for Claude Earl for review; and the statement of decision is to be sent to the clerk of the court after the review is completed. The court also set this review hearing.

The proposed statement of decision was not in the court's file at the time this ruling was prepared.

TENTATIVE RULING # 15: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 9, 2022 IN DEPARTMENT NINE. 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 PATRICK JOHN DUNN FAMILY TRUST 21PR0043**Petition for Trust Accounting, for Return of Trust Property, and Recovery of Damages.**

The verified petition alleges: the settlor passed away in 2009; Pauline Baker is the successor trustee of the Trust; on October 22, 2009 an affidavit of death was recorded by Pauline Baker; petitioner is a beneficiary of the Trust and recently learned that the successor trustee recently sold real property belonging to the Trust; on August 9, 2021 a letter was sent to the successor trustee requesting a complete schedule of the Trust assets and liabilities of the Trust, the information mandated to be provided under Probate Code, § 16061.7, and an accounting; none of the requested information was provided; petitioner has learned that the subject real property was sold by respondent Baker as successor trustee and the deed recorded on February 18, 2021; although petitioner does not have a complete copy of the Trust, she has seen it and read some of its contents; the petitioner's copy of the Trust was located in the home that was sold; petitioner is informed and believes that the Trust provided that the subject real property was to be kept for the lifetimes of all three of the settlor's children, unless a majority of the children agree to sell and all were informed of the sale; the Trust also provided that each of the children had the first right of refusal to purchase the property in event it was as decided to sell the property; petitioner was deprived of this first right of refusal; since the property was sold, petitioner has not received any distribution from the Trust or accounting of the proceeds of the sale; and petitioner is informed and believes that respondent successor trustee has taken the proceeds of the sale, which amounts to \$400,000, for her own benefit.

Petitioner seeks a court order providing the following: directing respondent trustee to deliver a copy of the Trust within 30 days; compelling the respondent trustee to file an accounting with

the court within 30 days; and the respondent trustee's share of the Trust be surcharged the costs of suit and attorney fees incurred.

Jurisdiction

The verified petition states that trustee/beneficiary Baker is a resident of Texas. Petitioner argues that it is appropriate for the California Courts to exercise jurisdiction over the issues raised in this petition in that it involves conduct concerning the main asset of the Trust, which is real property located in California

“The court may exercise jurisdiction in proceedings under this division on any basis permitted by Section 410.10 of the Code of Civil Procedure.” (Probate Code, § 17004.)

“Section 17004 recognizes that the court, in proceedings relating to internal trust affairs or other purposes described in Section 17000, may exercise jurisdiction on any basis that is not inconsistent with the California or United States Constitutions, as provided in Code of Civil Procedure Section 410.10. See generally Judicial Council Comment to Code Civ.Proc. § 410.10. In addition, Section 17003 codifies a basis of personal jurisdiction derived from concepts of presence in the state and consent to jurisdiction. However, personal jurisdiction over a trustee may be exercised where the trustee is found, regardless of the location of the trust property. See Estate of Knox, 52 Cal.App.2d 338, 348, 126 P.2d 108 (1942). Similarly, jurisdiction may be exercised to determine matters concerning trust property, particularly land, located in California even if the principal place of administration of the trust is not in California. See Restatement (Second) of Conflict of Laws § 276 & comments (1969); 5 A. Scott, The Law of Trusts §§ 644-47, at 4074-83 (3d ed.1967)” (Emphasis added.) (Law Revision Commission Comments to Probate Code, §17004.)

The court will reserve ruling on the issue of jurisdiction until after the respondent trustee has the opportunity to raise objections and opposition at the hearing.

Accounting, Return of Property, and Damages

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, 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).)

“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.)

"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 trustee or any interested person may file a petition to determine ownership of real or personal property and to obtain an order directing the conveyance or transfer real or personal property in any of the following cases: "(A) Where the trustee is in possession of, or holds title to, real or personal property, and the property, or some interest, is claimed to belong to another. (B) Where the trustee has a claim to real or personal property, title to or possession of which is held by another. (C) Where the property of the trust is claimed to be subject to a creditor of the settlor of the trust." (Probate Code, § 850(a)(3).)

The petition essentially alleges that the trustee has improperly retained the proceeds from the sale of the Trust's real property and that the other two beneficiaries have a claim to their share of the proceeds of the sale of a Trust asset.

Where the petition to determine ownership of property involves a Trust, notice of the hearing and a copy of the petition must be served at least 30 days prior to the hearing on the trustee and each person claiming an interest in, or having title to or possession of, the subject property in the same manner as service of a summons and complaint and by mail to all beneficiaries and the Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General. (Probate Code, §§ 851(a)(2), 851(b)(3) and 17203(a).)

"A proceeding under this chapter is commenced by filing a petition stating facts showing that the petition is authorized under this chapter. The petition shall also state the grounds of

the petition and the names and addresses of each person entitled to notice of the petition.”
(Probate Code, § 17201.)

“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).)

The proof of service declares that notice of the hearing and a copy of the petition were served by mail to the successor trustee/beneficiary and beneficiary Cherien Mitchell on November 29, 2021. The declaration does not establish service to the successor trustee was served out-of-state pursuant to Code of Civil Procedure, § 415.40 as it does not declare that successor trustee/beneficiary Baker was served by first class mail, return receipt requested, and there is no return receipt executed by the trustee in the court’s file.

“A summons may be served on a person outside this state in any manner provided by this article or by sending a copy of the summons and of the complaint to the person to be served by first-class mail, postage prepaid, requiring a return receipt. Service of a summons by this form of mail is deemed complete on the 10th day after such mailing.” (Code of Civil Procedure, § 415.40.)

“Proof that a summons was served on a person outside this state shall be made: ¶ (a) If served in a manner specified in a statute of this state, as prescribed by Section 417.10, and if service is made by mail pursuant to Section 415.40, proof of service shall include evidence satisfactory to the court establishing actual delivery to the person to be served, by a signed return receipt or other evidence;” (Code of Civil Procedure, § 417.20(a).)

The proof of service filed on August 22, 2022 declares that notice of the continued hearing date of September 28, 2022 was served by mail to trust beneficiary on August 18, 2022.

On August 9, 2022 the court granted petitioner's request to serve trustee Baker by publication in El Paso County, Texas. The order also directed service by publication in New Mexico as the petitioner's counsel declared that petitioner's private investigator reported that the person found at the last known address of the trustee stated that the trustee had gone to New Mexico.

On September 30, 2022 petitioner filed a proof of service by publication in the Albuquerque Journal in New Mexico on August 22, 2022, August 29, 2022, September 5, 2022, and September 12, 2022; and a proof of service by publication at the digital news site of the El Paso Herald Post in Texas from August 18, 2022 through September 19, 2022.

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 # 16: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 9, 2022 IN DEPARTMENT NINE. 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.