

1. ESTATE OF McCLURG, 22PR0305

Motion to Continue Hearing on Petition for Probate

TENTATIVE RULING # 1: GOOD CAUSE APPEARING, THE MOTION FOR CONTINUANCE IS GRANTED. THE HEARING ON THE PETITION FOR PROBATE IS CONTINUED TO 8:30 A.M., WEDNESDAY, MARCH 1, 2023, IN DEPARTMENT FOUR.

2. CONSERVATORSHIP OF JOHN S., 22PR0035

Trial Setting; PC 1368 Status

This matter was continued from November 30, 2022.

**TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M.,
WEDNESDAY, DECEMBER 21, 2022, IN DEPARTMENT FOUR.**

3. MATTER OF THE EDWIN & SHIRLEY GUTTRY TRUST, 21PR0029**(1) Motion to Quash Deposition Subpoena for Production of Business Records****(2) Amended Petition to Compel Accounting**

On November 16, 2022, respondent filed a motion to quash deposition subpoena for production of business records served by petitioner. Respondent also requests attorney fees and costs for having to bring the motion. The motion is opposed.

Respondent's motion is made on the basis that petitioner's subpoena is essentially an effort to circumvent the primary issue raised in the petition; that is, whether respondent is legally compelled to provide an accounting to petitioner which would necessarily include the business records requested in the subpoena.

The motion is well taken. Respondent is the trustee of a revocable trust. "The trustee is not required to account to the beneficiary, provide the terms of the trust to a beneficiary, or provide requested information to the beneficiary ... [¶] ... [i]n the case of a beneficiary of a revocable trust, as provided in subdivision (a) of Section 15800, for the period when the trust may be revoked." (Prob. Code, § 16069(a).)

Probate Code section 15800 states, in part, that "during the time that a trust is revocable and at least one person holding the power to revoke the trust, in whole or in part, is competent, the following shall apply: [¶] (1) The person holding the power to revoke, and not the beneficiary, has the rights afforded beneficiaries under this division. [¶] (2) The duties of the trustee are owed to the person holding the power to revoke." (*Id.*, subd. (a).)

Thus, because this action involves a revocable trust and at least one person holding the power to revoke is competent (or there has been no finding to the contrary), petitioner has not right to subpoena the trust's financial records. Respondent's motion to quash is granted. Respondent's counsel did not submit a declaration in support of the request for attorney fees and costs which sets forth the number of hours worked on the motion,

counsel's hourly rate, and the cost of the court filing fee. Accordingly, the request for attorney fees and costs is denied without prejudice.

The court notes that petitioner's amended petition was timely filed on December 7, 2022, but was prematurely set for hearing on December 14, 2022.

TENTATIVE RULING # 3: RESPONDENT'S MOTION TO QUASH DEPOSITION SUBPOENA IS GRANTED. RESPONDENT'S REQUEST FOR ATTORNEY FEES AND COSTS IS DENIED WITHOUT PREJUDICE.