

1. MATTER OF BAXLEY FAMILY LIVING TRUST 22PR0242**Petition for Trust Accounting, Removal of Trustee, Breach of Trust, Surcharge**

Petitioner, Mallie Ann Kerwood, is a co-beneficiary of The Baxley Family Living Trust Dated February 24, 1990, as restated April 26, 2004 (“Trust”). Respondent, Lisa Ivancich, is the Trustee and was the care custodian of the last survivor settlor, Thelma Baxley, who died in 2019. Pending is petitioner’s petition for trust accounting, to remove the Trustee for breach of the Trust, and for surcharge.

Petitioner alleges that since Thelma Baxley’s death, the Trustee has violated the duty owed to the two beneficiaries by, amongst other things: (1) failing and refusing to distribute the Trust’s significant monetary and other assets; (2) failing and refusing to keep beneficiaries of Trust administration despite repeated requests for information; (3) failing and refusing to provide timely accountings despite her duty to do so; (4) on information and belief, improperly and unlawfully transferring or otherwise using Trust property for her personal use; and (5) failing to make Trust assets productive.

Proof of service to the petition declares that the two Trust beneficiaries were served with notice of the original March 1, 2023, hearing and a copy of the petition on September 13, 2022. That hearing was subsequently continued by the court (due to reassignment from Department Eight to Department Nine) to March 27, 2023. To date, there is no proof of service of the amended hearing date on the beneficiaries or respondent.

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

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, MARCH 27, 2023, IN DEPARTMENT NINE. IF A PARTY WISHES TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2. CONSERVATORSHIP OF TAYLOR T. 21PR0052

Biennial Review of Conservatorship of the Person

TENTATIVE RULING # 2: ABSENT OBJECTION, THE CONSERVATORSHIP SHALL CONTINUE. THE COURT FINDS THAT ASSESSMENT OF THE COURT INVESTIGATOR FEE WOULD CAUSE A HARDSHIP TO THE CONSERVATORSHIP AND WILL NOT REQUIRE REIMBURSEMENT OF THE FEE. THE COURT SETS THE NEXT BIENNIAL CONSERVATORSHIP REVIEW AT 8:30 A.M., MONDAY, MARCH 24, 2025, IN DEPARTMENT NINE.

3. ESTATE OF McCREADY 22PR0244

Petition to Administer Estate

**TENTATIVE RULING # 3: ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED.
BOND IS SET AT \$60,000. THE COURT SETS A HEARING RE: STATUS OF ADMINISTRATION
AT 8:30 A.M. ON MONDAY, MARCH 25, 2024, IN DEPARTMENT NINE.**

4. ESTATE OF O'SULLIVAN PP-20200146

Status of Administration

This matter was continued from May 4, 2022, and September 7, 2022.

The order for final distribution was entered on February 4, 2022. To date, there is no receipt of distribution and no Ex Parte Petition for Final Discharge (Judicial Council form DE-295) in the court's file.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, MARCH 27, 2023, IN DEPARTMENT NINE. IF A PARTY WISHES TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5. ESTATE OF HARVEY 21PR0051

Status of Administration

Letters of Administration were issued on March 7, 2022. The Final Inventory and Appraisal was filed on May 20, 2022. To date, there is no final account and request for order of final distribution in the court's file.

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, MARCH 27, 2023, IN DEPARTMENT NINE. IF A PARTY WISHES TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

6. ESTATE OF SANCHEZ PP-20200103

Status of Administration

This matter was continued from January 23, 2023. The minute order from the last hearing states only that the dispute concerning the Final Inventory and Appraisal was resolved. There is no other information concerning the status of estate administration. There is no further status update since the last hearing, and no documents have been filed in the case by either party since December 2022.

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, MARCH 27, 2023, IN DEPARTMENT NINE. IF A PARTY WISHES TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

7. ESTATE OF WISEBLOOD 23PR0039

Petition for Probate

TENTATIVE RULING # 7: ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED. THE WILL IS ADMITTED TO PROBATE. THE COURT SETS A HEARING RE: STATUS OF ADMINISTRATION AT 8:30 A.M. ON MONDAY, MARCH 25, 2024, IN DEPARTMENT NINE.

8. ESTATE OF FELTS PP-20200050

Status of Administration

The Final Inventory and Appraisal and Property Tax Certificate was filed on January 12, 2023. Because a hearing on the petition for final distribution on waiver of account is set for May 8, 2023, it appears appropriate to continue this hearing. The hearing regarding status of administration is continued to May 8, 2023.

TENTATIVE RULING # 8: HEARING RE: STATUS OF ADMINISTRATION IS CONTINUED TO 8:30 A.M. ON MONDAY, MAY 8, 2023, IN DEPARTMENT NINE.

9. ESTATE OF JEFFERIES 22PR0334

Petition to Administer Estate

TENTATIVE RULING # 9: ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED. THE COURT SETS A HEARING RE: STATUS OF ADMINISTRATION AT 8:30 A.M. ON MONDAY, MARCH 25, 2024, IN DEPARTMENT NINE.

10. ESTATE OF CUFFE 21PR0041

Status of Administration

TENTATIVE RULING # 10: THE ORDER FOR FINAL DISCHARGE HAVING BEEN ENTERED ON MARCH 13, 2023, MATTER IS DROPPED FROM THE CALENDAR. PROBATE IS CLOSED.

11. ESTATE OF NICHOLS 22PR0243

Petition to Administer Estate

**TENTATIVE RULING # 15: ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED.
THE COURT SETS A HEARING RE: STATUS OF ADMINISTRATION AT 8:30 A.M. ON MONDAY,
MARCH 25, 2024, IN DEPARTMENT NINE.**

12. ESTATE OF REX WIGHT PP-20190232**Status of Administration (See Related Item No. 13)**

Letters of Administration With Will Annexed were issued on July 8, 2020. The Final Inventory and Appraisal was filed on March 17, 2020. On March 30, 2022, the personal representative filed six waivers of account. Then, on August 26, 2022, the personal representative filed an order for the petition for final distribution on waiver of account. However, there is no actual petition in the court's file.

Further, an Amended Creditor's Claim was filed by the Franchise Tax Board. There is nothing in the record indicating that the personal representative allowed or rejected the claim in whole or in part. "When a claim is filed, the personal representative shall allow or reject the claim in whole or in part." (Prob. Code, § 9250(a).) "The allowance or rejection shall be in writing. The personal representative shall file the allowance or rejection with the court clerk and give notice to the creditor as provided in Part 2 (commencing with Section 1200) of Division 3, together with a copy of the allowance or rejection." (Prob. Code § 9250(b).)

"The allowance or rejection shall contain the following information: [¶] (1) The name of the creditor. [¶] (2) The total amount of the claim. [¶] (3) The date of issuance of letters. [¶] (4) The date of the decedent's death. [¶] (5) The estimated value of the decedent's estate. [¶] (6) The amount allowed or rejected by the personal representative. [¶] (7) Whether the personal representative is authorized to act under the Independent Administration of Estates Act (Part 6 (commencing with Section 10400)). [¶] (8) A statement that the creditor has three months in which to act on a rejected claim." (Prob. Code § 9250(c).)

TENTATIVE RULING # 11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, MARCH 27, 2023, IN DEPARTMENT NINE. IF A PARTY WISHES TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

13. ESTATE OF HEILMAN PP-20190123

Petition for Final Distribution on Waiver of Account

TENTATIVE RULING # 12: ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED. COUNSEL FOR THE EXECUTORS IS DIRECTED TO SUBMIT A PROPOSED ORDER GRANTING FINAL DISTRIBUTION ON WAIVER OF ACCOUNT AND THE MANDATORY EX PARTE PETITION FOR FINAL DISCHARGE (JUDICIAL COUNCIL FORM DE-295) TO THE COURT FOR ITS APPROVAL.

14. ESTATE OF SHERRY WIGHT PP-20110054

Status of Administration (See Related Item No. 11)

Letters of Administration were issued on July 8, 2020. The Final Inventory and Appraisal was filed on March 30, 2020. On March 30, 2022, the personal representative filed two waivers of account. Then, on August 26, 2022, the personal representative filed an order for the petition for final distribution on waiver of account and two declarations in support of heirship. However, there is no actual petition in the court's file.

TENTATIVE RULING # 13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, MARCH 27, 2023, IN DEPARTMENT NINE. IF A PARTY WISHES TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

15. ESTATE OF McCALLISTER 21PR0019

Status of Administration

The order for final distribution was entered on January 23, 2023. Receipts of distribution were filed on March 9, 2023. To date, the personal representative has not submitted an Ex Parte Petition for Final Discharge (Judicial Council form DE-295) for the court's approval.

TENTATIVE RULING # 14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, MARCH 27, 2023, IN DEPARTMENT NINE. IF A PARTY WISHES TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

16. MATTER OF THE THEDERS REVOCABLE TRUST 22PR0283

Petition for Order Confirming Trust Assets

TENTATIVE RULING # 16: ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED.

17. MATTER OF THE YUMANS FAMILY TRUST 22PR0221

Request for Attorney Fees

On January 9, 2023, the court granted the petition to determine ownership of estate property and directing the trustee to transfer property, but reserved the issue of petitioner's request for an award of attorney fees and costs against PNC Bank. Assuming PNC Bank's compliance with the court order entered on February 1, 2023, the court finds that an award of fees and costs against PNC is not warranted under the circumstances. Petitioner's request is denied.

TENTATIVE RULING # 17: PETITIONER'S REQUEST FOR AN AWARD OF ATTORNEY FEES AND COSTS AGAINST PNC BANK IS DENIED.

18. MATTER OF WRAY D. FLEMING AND NELLIE W. FLEMING FAMILY TRUST 22PR0246**Petition for Order Compelling Trustee to Provide Copy of Trust and to Account**

Wray and Nellie Fleming were the original settlors of the Wray D. Fleming and Nellie W. Fleming Family Trust, dated June 28, 2000 (“Trust”).¹ Petitioner is a named beneficiary of the Trust. (Pet., Ex. A, Art. IX.D.2.) While Nellie was still living, on October 1, 2007, the two original grantors executed a First Amendment to the Trust because the original document had been lost. (Opp., Decl. of Wray Fleming in Support of Opposition, ¶¶ 1, 2.) The Trust assets were described in Schedules A, B, and C of the Trust, pages 57–60 of the Trust document. These four pages are missing. (*Id.*, Wray Decl., ¶¶ 1, 2.)

Article VII of the First Amendment to the Trust provided that upon the death of one of the two settlors, the Trust would be divided into subtrusts, including the Decedent’s Bypass Trust, which would then become irrevocable, and the Survivor’s Trust, which remained available to the remaining settlor, Wray, who is the respondent in this action. (Pet., Ex. A, Art. VII.E.)

After Nellie’s death, respondent, the surviving grantor, did not subdivide the Trust assets to create an irrevocable Decedent’s Bypass Trust. On August 26, 2015, he executed a Second Amendment to the Trust which eliminated the reference to a separate Decedent’s Bypass Trust. (Pet., Ex. B, ¶ 3.)

Wray later executed a Third Amendment to the Trust on October 17, 2020 and restored the reference to the Decedent’s Bypass Trust. (Pet., Ex. C, ¶ 4.)

In May, 2022, petitioner demanded a copy of the Trust, including a list of assets that fund the Trust. Wray contends that during August and September of 2022 he diligently searched for responsive documents. However, following a thorough search, the schedule of assets originally appended to the Trust remain missing and he is unable to provide information about the Trust assets. (Opp., Wray Decl., ¶ 2.)

¹ The court will use Wray Fleming’s and Nellie Flemings’ first names to avoid confusion, not out of disrespect.

In October 2022, respondent's counsel initiated an inquiry with Rachelle Nicolle, the attorney who originally drafted the Trust in 2007. (Opp., p. 2, ¶ 3.) Respondent represents that the search for a list of Trust assets will resume when Ms. Nicolle returns to the State of Washington in June 2023 and can access the archived documents in her storage unit. (Opp., Decl. of David Becker, ¶ 3.)

Petitioner requests:

1. A complete copy of the Trust instrument, including a list of Trust assets;
2. An accounting for the Trust covering the period from Nellie's death on August 6, 2008, to the present;
3. An order for respondent to petition for the settlement of the account and to give notice of the hearing on the petition;
4. An award of attorney's fees and costs for bringing this petition; and
5. Such other and further relief as the court may deem proper.

Respondent opposes the request for an accounting on the basis that petitioner does not have standing to seek an accounting until she is authorized to receive income or principal distributions from the Trust, citing Probate Code section 16062. Respondent represents that petitioner will be provided with a copy of the Trust and a list of Trust assets as soon as attorney Rachelle Nicolle is able to get to her storage unit in Washington State in June 2023. Respondent objects to the award of attorney's fees and costs because those fees and costs will be paid out of the Trust, to the detriment of the other named beneficiary.

In support of her demand for an accounting, petitioner cites Esslinger v. Cummins (2006) 144 Cal.App.4th 517. In Esslinger, the court held that the trial court was within its discretion to order the trustee to provide a report of information to a contingent beneficiary who would not otherwise have standing to demand an accounting under Probate Code section 16062.

Pursuant to Esslinger, petitioner may be entitled to certain information regarding the Trust, which respondent has offered to provide when the attorney who drafted the trust document is able to access those archived files. However, as a contingent beneficiary of the Trust, petitioner is not

entitled to demand an accounting from the Trustee, much less a Probate Code-compliant accounting covering a period of 15 years. (Prob. Code, §§ 16062, 16064; Pet., Ex. A, Art. XIII.A.)

TENTATIVE RULING # 18: THE PETITIONER'S REQUEST FOR AN ACCOUNTING AND AN AWARD OF ATTORNEY'S FEES AND COSTS IS DENIED.

19. MATTER OF THE SADDLE ROAD TRUST PP-20210130

Petition to Suspend Trustee Powers, Remove Trustee, Compel Accounting, Etc.

This matter was continued from January 9, 2023.

To date, there is still no proof of service by publication of the notice of hearing and a copy of the petition on respondent in the court's file.

TENTATIVE RULING # 19: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, MARCH 27, 2023, IN DEPARTMENT NINE. IF A PARTY WISHES TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.