

04-24-23
Dept. 9
Tentative Rulings

1. CONSERVATORSHIP OF GRISHAM (SEE #11)

PP20200066

Trial Setting

TENTATIVE RULING #1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 24, 2023, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

04-24-23
Dept. 9
Tentative Rulings

2. CONSERVATORSHIP OF PIACENTINI 22PR0065
Spousal Property Petition

TENTATIVE RULING #2: ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED.

**IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530)
621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

3. ESTATE OF ELTISTE 22PR0067

Petition for Final Distribution on Waiver of Account

Letters of Administration were issued on April 29, 2022. A Final Inventory and Appraisal was filed on September 28, 2022. Waivers of Account were filed by both surviving heirs on February 13, 2023. Proof of Service of Notice was filed on February 16, 2023.

The petition requests approval of waivers of accounting, distribution of the estate in equal shares to two surviving heirs, payment of \$11,904.06 in statutory attorney's fees and \$1,124.70 in costs, as well as ratification, approval and confirmation of all acts, transactions, sales and investments of the personal representatives and that the estate be closed.

TENTATIVE RULING #3: ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED. THE FINAL DISTRIBUTION HEARING SET ON MAY 22, 2023 IS VACATED. THE COURT SETS A HEARING FOR STATUS OF ADMINISTRATION ON APRIL 22, 2024 AT 8:30 A.M. IN DEPARTMENT 9.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

4. ESTATE OF NELSON 23PR0015

Petition for Probate

Decedent died testate on January 3, 2023. A will dated August 5, 2014, has been lodged with the court. On February 6, 2023, the executor named in the will filed a declination with the court. Petitioner has executed a duties/liabilities form (form DE-147/147s) and a waiver of bond and nomination of petitioner as administrator are on file, executed by decedent's only surviving child. Proof of service of notice of the petition and proof of publication are on file with the court.

TENTATIVE RULING #4: ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED. THE COURT SETS A HEARING FOR STATUS OF ADMINISTRATION ON APRIL 22, 2024 AT 8:30 A.M. IN DEPARTMENT 9.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5. ESTATE OF COTE 22PR0276

Petition for Letters of Administration

Decedent died intestate, survived by two siblings. Petitioner, decedent's brother, requests to be appointed personal administrator of the estate. No proof of service or proof of publication is on file with the court. Petitioner has not yet filed the required duties/liabilities forms (form DE 147, 147s). While the petition requests waiver of bond, there is no bond waiver on file from the other surviving heir.

The court cannot issue letters of administration until the required forms are on file with the court.

TENTATIVE RULING #5: THIS MATTER IS CONTINUED TO JULY 24, 2023 TO ALLOW PETITIONER TIME TO FILE REQUIRED FORMS WITH THE COURT.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

6. ESTATE OF GRANGER 22PR0335

Petition to Determine Succession to Real Property

This is a petition to determine the succession of three parcels of real property held by decedent, a resident of El Dorado County, as her separate property in Lake County, California. Decedent died intestate and is survived by petitioner, her spouse, and three children. All three children, who would otherwise be entitled to inherit a share of decedent's real property, have executed waivers of their right to inherit these parcels by intestate succession and assignments of their interest to petitioner. Such waivers and assignments are attached to the petition on file with the court, as is an appraisal of the properties by the probate referee.

TENTATIVE RULING #6: ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

7. ESTATE OF MOSSER 21PR0037

Review Hearing

At the February 27, 2023, hearing, the petition for final distribution was granted by the court and the court requested that an ex parte petition for final discharge be submitted to the court for its approval. No petition for final discharge is on file.

TENTATIVE RULING #7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 24, 2023, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

8. ESTATE OF TAYLOR PP20210164

Review Hearing

Letters of Administration were issued on November 12, 2021. The Final Inventory and Appraisal was filed on December 17, 2021. A petition for Final Distribution and Account was filed on April 11, 2023. The petition requests approval of all acts and transactions of the personal representative, \$8,319.90 in statutory attorney's fees and \$376.05 in costs, payment of \$1,530.30 in fees to petitioner and \$6,900 for reimbursable expenses chargeable to the estate, payment of \$800 to Justin Taylor for costs that he advanced, as well as approval of distribution of \$49,330.30 to each of decedent's heirs.

There is no proof of service of the petition on file with the court.

TENTATIVE RULING #8: THIS MATTER IS CONTINUED TO JULY 24, 2023 TO ALLOW PETITIONER TIME TO FILE PROOF OF SERVICE OF THE PETITION WITH THE COURT.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

9. ESTATE OF ARANDA PP20200127

Review Hearing – Status of Administration

Letters Testamentary were issued on October 7, 2020. The Final Inventory and Appraisal was filed on May 19, 2021. There is no request for Final Distribution and Account on file with the court.

TENTATIVE RULING #9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 24, 2023, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

10. ESTATE OF VALLOT 22PR0278

Letters of Administration

Decedent died intestate and is survived by two siblings, one who resides in South Africa, and the children of a predeceased sibling who reside in Ireland.

A petition for Letters of Administration with full authority was filed on October 17, 2022. The bond in the amount of \$382,000 was filed on November 30, 2022. A duties/liabilities statement (forms DE-147/147s) is on file with the court. Decedent's sister, the only heir residing in the United States, executed a nomination of petitioner as administrator of the estate. Proof of service was filed on October 27, 2022, and proof of publication was filed on November 22, 2022.

On November 30, 2022 petitioner was issued special Letters of Administration for the purpose of selling 20 horses that decedent owned at the time of his death, and to collect and deposit the proceeds from the sale of the horses.

TENTATIVE RULING #10: ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED. THE COURT SETS A HEARING FOR STATUS OF ADMINISTRATION ON APRIL 22, 2024 AT 8:30 A.M. IN DEPARTMENT 9.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

11. ESTATE OF GRISHAM (SEE #1)

22PR0061

(1) Petition to Admit Holographic Will to Probate

(2) Trial Setting

Decedent died on July 17, 2021. A verified petition to administer the of decedent was filed on February 28, 2022, by Sara McCarthy, a sibling of the decedent, representing that the decedent died intestate, survived by three siblings. The petition requested that Deryk Walcott, a professional fiduciary, be appointed as administrator.

On April 12, 2022, Rebecca Bair, another of decedent's siblings, filed an objection and a competing petition. Ms. Bair did not object to the appointment of Mr. Walcott as personal representative but requested that decedent's will, dated January 1, 2018, be admitted to probate. This petition attached a photocopy of a will handwritten on lined notebook paper leaving the entire estate to Rebecca Bair and expressly excluding the decedent's other two siblings. Ms. Bair filed a Proof of Holographic Instrument (Form DE-135) with the court on May 27, 2022, stating that on multiple occasions she had witnessed the decedent drafting and signing versions of the will, which was found among the decedent's possessions.

Letters of Administration were issued to Mr. Walcott on June 2, 2022.

On July 7, 2022, Rebecca Bair filed an amended petition stating that the original of the will had been lost but requesting that the photocopy of the will be admitted to probate.

Probate Code § 6110(c)(1) requires the signature on a will to be witnessed by at least two persons present at the same time, or the testator's acknowledgement of the signature. If that requirement is not met, the will may still be admitted if the proponent of the will establishes, by clear and convincing evidence, that the testator intended the will to constitute the testator's will at the time it was signed. Section 6111(a) allows admission of a will for which the signature or acknowledgement of signature was not witnessed if the signature and material provisions of the will are in the testator's handwriting. Extrinsic evidence may be utilized to establish the admissibility of a holographic will. Probate Code § 6111.5.

If the only witness is the party is an interested party and there are no other witnesses, there is a presumption that the witness "procured the devise by duress, menace, fraud, or undue influence," Probate Code § 6112(c), and if the interested witness fails to rebut this presumption, the witness will take such share of the estate as would have passed by intestate succession.

Two objections have been filed to the admission of the proffered holographic will.

04-24-23
Dept. 9
Tentative Rulings

TENTATIVE RULING #11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 24, 2023, IN DEPARTMENT NINE.

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12. ESTATE OF NASH PP20210138

Review Hearing – Inventory and Appraisal - Status of Administration

Letters Testamentary were issued on September 20, 2021. Partial Inventory and Appraisal Number 1 was filed on January 14, 2022. Partial Inventory and Appraisal Number 2 was filed on May 12, 2022. There is no Final Inventory and Appraisal in the court's file.

TENTATIVE RULING #12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 24, 2023, IN DEPARTMENT NINE.

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13. ESTATE OF BURGON

PP20210163

Status of Administration

Letters of Administration were issued on October 13, 2021. The Final Inventory and Appraisal was filed on June 15, 2022. There is no Final Account and Request of Order of Final Distribution in the court's file.

TENTATIVE RULING #13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 24, 2023, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

14. ESTATE OF WEST

22PR0268

(1) Spousal Property Hearing

(2) Letters of Administration

Decedent died intestate on June 20, 2022. Petitioner is decedent's spouse. Waivers of bond are on file, executed by decedent's two surviving children. Petitioner has executed a duties/liabilities form (form DE-147/147s). Proof of service of notice of the petition and proof of publication are on file with the court.

A petition for determination of spousal property was filed by decedent's spouse on September 29, 2022. That petition lists seven vehicles that were acquired during the marriage, and petitioner requests a determination that a 50% share of title to those vehicles belonged to petitioner as her share of the community property, and that the other 50% share of title to those vehicles passed to her upon the decedent's death through intestate succession. The court notes that there is a typographical error as to a "2033" model year Infiniti CP. However, the VIN number supplied (JNKC54E53M211515) is an adequate unique identifier for the individual vehicle.

TENTATIVE RULING #14: ABSENT OBJECTION, PETITION FOR LETTERS OF ADMINISTRATION IS GRANTED AS REQUESTED. THE PETITION FOR DETERMINATION/CONFIRMATION OF SPOUSAL PROPERTY IS ALSO GRANTED AS REQUESTED, AND THE COURT FINDS THAT PETITIONER HOLDS 100 PERCENT INTEREST IN THE TITLE TO THE SEVEN VEHICLES LISTED IN THE PETITION TO DETERMINE/CONFIRM SPOUSAL PROPERTY. THE COURT SETS A HEARING FOR STATUS OF ADMINISTRATION ON APRIL 22, 2024 AT 8:30 A.M. IN DEPARTMENT 9.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

15. ESTATE OF FARR 22PR0030

Status of Administration

A Final Inventory and Appraisal was filed on June 27, 2022. There is no Final Account and Request of Order of Final Distribution in the court's file.

TENTATIVE RULING #15: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 24, 2023, IN DEPARTMENT NINE.

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16. ESTATE OF JELENIC 22PR0129

Status of Administration

A decree of Final Distribution was entered on November 16, 2022. Receipts for Distributions are on file with the court. There is no petition for Final Discharge on file with the court.

TENTATIVE RULING #16: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 24, 2023, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

17. ESTATE OF MORGAN 22PR0277

Letters of Administration

There are two competing petitions in this case. One was submitted on October 17, 2021, by the surviving spouse of decedent, Kimberly Morgan, and declares that he died intestate. In support of that petition, a duties/liabilities statement (forms DE-147/147s) is on file with the court, proof of service was filed on November 7, 2002, and proof of publication was filed on December 22, 2022.

The other petition for probate of will and for Letters of Administration with will annexed, was submitted on April 12, 2023, by decedent's surviving son, William S. Morgan, whose petition is accompanied by a will that he has lodged with the court. Objector William S. Morgan alleges that Kimberly Morgan is incompetent to serve as administrator pursuant to Probate Code sections 8402 and 8502 because she is "incapable of properly executing the duties of the office [and] . . . has wrongfully neglected the estate." Cal. Probate Code §8502(d).

Decedent died on September 6, 2021. He is survived by petitioner Kimberly Morgan (his wife), three biological children, and an adopted step-child.

The will submitted with the second petition, dated April 2, 1991, is associated with a trust (The William H. Morgan and Rexena W. Morgan Family Trust) that names Rexena Morgan as trustee. Rexena Morgan was decedent's first wife and objector William S. Morgan's mother and is now deceased. The Trust names a now-defunct institution as Rexena Morgan's successor trustee. Objector alleges that the real property and substantially all of the personal property of decedent was acquired prior to his marriage to petitioner Kimberly Morgan, that the Trust became irrevocable upon Rexena Morgan's death, that title to the real estate is still held in the name of the trust, and that decedent's real and personal property is intended through the terms of the trust to pass to his three surviving children.

Objector/petitioner filed documentation that on March 10, 2023, (four days after she was contacted by Objector/petitioner's attorney informing her of the existence of the Trust and requesting a copy of her petition for probate) Kimberly Morgan filed a domestic violence restraining order against him and against one of his other siblings in Sacramento County, from which it was dismissed for lack of jurisdiction. Objector/petitioner states that he had no notice of this hearing, and he alleges that Kimberly Morgan also filed a petition to administer decedent's estate in Sacramento County without providing notice to decedent's children, and that petition was also dismissed for lack of jurisdiction.

Objector/petitioner alleges that Kimberly Morgan did not provide notice of her petition to the correct addresses of decedent's children. The court notes that the petition filed by Kimberly Morgan lists all three adult children of decedent as living at the same address as Kimberly Morgan, and the notice of petition lists the same address for two of the three children and lists no address at all for "Billy Samuel Morgan." The address for notice provided by Kimberly Morgan for all of these parties, 2850 Osborne Road, Cameron Park, is the same real estate that is held in the decedent's Trust and was the decedent's residence at the time of his

04-24-23
Dept. 9
Tentative Rulings

death. The notice of petition filed by objector/petitioner lists different addresses for Kristen Morgan and Tammy Morgan, who are named in the will.

Objector/petitioner states that he believes that Kimberly Morgan has already sold off decedent's assets that she was not authorized to liquidate. Objector/petitioner argues that this conduct amounts to waste, embezzlement and mismanagement and fraud on the estate which implicates Probate Code § 8502 and disqualifies Ms. Morgan from serving as personal representative for the estate. He requests that Ms. Morgan's petition be denied, that she be required to account for decedent's personal property and be required to disgorge all proceeds from unauthorized sales.

TENTATIVE RULING #17: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 24, 2023, IN DEPARTMENT NINE.

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18. IN THE MATTER OF THE NAYGROW FAMILY TRUST

22PR0260

Petition for Instructions

With reference to the Naygrow Family Trust, dated May 24, 1989, as Amended and Restated, this petition requests the court:

- 1) To deem an *inter-vivos* gift to Steven J. Orlando advanced by the trustors during their lifetime to be a complete advance of all at-death transfers to Steven J. Orlando, or his issue, as set forth in the terms of the Trust;
- 2) To instruct petitioner, as trustee of the Trust, and any sub-trusts created thereunder, to administer the Trust under the terms of the last duly executed Fourth Amendment and Restatement of Trust.
- 3) To instruct petitioner, as Trustee of the Trust, and any sub-trusts created thereunder, to accept and implement the exercise of limited power of appointment exercised by Ritz Naygrow over the corpus of the Marital Trust(s), and the Survivor's Trust, as set forth in the duly executed, valid, irrevocable exercise of the power of appointment set forth in Ritz Naygrow's Declaration submitted with the petition. See Declaration of Ritz Naygrow in Re the Naygrow Family Trust-Instructions to Trustee and Exercise of Limited Power of Appointment, September 9, 2022.

(1) *Inter-vivos* Advancement to Steven J. Orlando

On April 1, 2004, the settlors, while both were still living, effectuated an advance of the \$1,000,000 gift to Steven J. Orlando that was contemplated by the Trust. This gift was intended by the settlors to be in satisfaction of the contemplated at-death transfer and was the exact amount of the gift that was to be to Steven J. Orlando's inheritance from the Trust. This intention is confirmed by the Declaration of Ritz Naygrow that is appended to the Petition. Declaration of Ritz Naygrow in Re the Naygrow Family Trust-Instructions to Trustee and Exercise of Limited Power of Appointment, September 9, 2022 at ¶13.

(2) Fourth Amendment and Restatement of Trust

The petition declares that the Fourth Amendment and Restatement of the Trust, dated June 5, 2000, duly executed and notarized and incorporated by reference into the petition is the last and final document that expresses the settlors' testamentary intentions and that meets legal all requirements. The petition declares that a subsequent attempted amendment (Fifth Amendment and Restatement of Trust) was not validly executed prior to Mildred Naygrow's death and should be considered a nullity. The Declaration of Ritz Naygrow, surviving settlor of the Trust, which is appended to the petition, confirms this intent. Declaration of Ritz Naygrow in Re the Naygrow Family Trust-Instructions to Trustee and Exercise of Limited Power of Appointment, September 9, 2022 at ¶18.

(3) Limited Power of Appointment

The petition requests the court's instruction to the petitioner to effectuate the valid appointment of the Marital Trust Corpus. This is supported by the terms of the Trust, Article VI, Section 6.05C:

On the death of the survivor, the trustee shall distribute the balance then remaining of the principal of the Marital Trust, excluding accrued and undistributed income distributed pursuant to paragraph 6.05A and the specific gift distributed pursuant to paragraph 6.05B (if any) to one or more of the trustor's issue on such terms and conditions, either outright, in trust by creating further powers of appointment as the survivor shall appoint by valid will or inter-vivos document, executed after the decedent's death, that specifically refers to this power of appointment.

As stated in the petition, Ritz Naygrow has properly appointed the corpus of the Marital Trusts by his execution of the Declaration attached to the petition. Declaration of Ritz Naygrow in Re the Naygrow Family Trust-Instructions to Trustee and Exercise of Limited Power of Appointment, September 9, 2022 at ¶7.

TENTATIVE RULING #18: ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED.