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Dept. 9
Probate Tentative Rulings

1. ESTATE OF FRITZINGER 22PR0248

Letters of Administration

As noted in the Tentative Ruling for the hearing on March 20, 2023:

1. Pages 2 and 4 of the Petition, which was filed on September 12, 2022, are missing from the court's file.

2. Judicial Council Form DE-147s is not on file with the court. Although Petitioner did file an amended DE-147 form on March 21, 2023 to include driver's license information, the DE-147s also requires Petitioner's birthdate. Further the DE-147s form is a separate document that allows the court to designate it as confidential. The amended DE-147 does not meet the requirements of El Dorado County Superior Court Rules, Rule 10.02.10.

3. Although proof of publication was filed on December 29, 2022, there is no proof of service of the Petition on interested parties on file with the court. Whether or not there are interested parties who should have received notice is not possible to determine because of the pages missing from the Petition.

TENTATIVE RULING #1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 10, 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.

2. ESTATE OF WHEAT 22PR0251

Letter Testamentary

Decedent died testate on August 5, 2022. Petitioner is decedent's daughter.

The Will was lodged with the court on March 20, 2023, and names Petitioner as Executor. The Will waives bond.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on September 16, 2022.

Proof of service of Notice of the Petition was filed on March 20, 2023.

Proof of publication was filed on April 17, 2023.

TENTATIVE RULING #2: ABSENT OBJECTION, THE PETITION GRANTED AS REQUESTED. A STATUS OF ADMINISTRATION HEARING IS SET AT 8:30 A.M. ON MONDAY, JULY 8, 2024, 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.

3. ESTATE OF DENNIS FORNI PP20080058

Status of Administration

Related Case: Estate of Mary Forni (PP20060187)

At the last hearing on this matter on July 21, 2022, the court noted that counsel for the estate, Michael Petersen, passed away.

At the last Status of Administration hearing, the court's Tentative Ruling indicated that the Administrator, Frances Forni, had passed away on May 18, 2021. Prior to her passing the Administrator indicated that she would not continue paying taxes on the property in the estate because it was valueless. The only remaining creditor in the estate, the California Department of Health Care Services, accepted a lien on the property.

The sole beneficiary of the estate declined to be appointed Administrator, does not want to take title to the property and intends to let it go to tax sale.

TENTATIVE RULING #3: ABSENT OBJECTION, PROBATE IS CLOSED AND THE MATTER IS DISMISSED DUE TO LACK OF PROSECUTION OF THE ACTION.

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 BELLEI PP20160108

Accounting Hearing

The decedent died on June 24, 2006 in Argentina and was not a resident of California but left an estate in El Dorado County. Letters of Administration issued on August 17, 2016, and Amended Letters were issued on August 19, 2019. The final Inventory and Appraisal was filed on August 1, 2018. The Seventh and Final Account and Report of Administrator was filed on March 27, 2023.

The Report declares that the estate is insolvent. The I.R.S. received the entire proceeds of the sale of real property. The Administrator has an arrangement with the I.R.S. to pay the I.R.S. the remainder of the estate after paying probate expenses. There will be no distribution to the heir named in decedent's will due to the outstanding estate taxes owed to the I.R.S.

The sole asset of the estate is three parcels of vacant land in which the estate owned outright, and two additional vacant parcels in which the estate held a partial ownership interest. Those parcels were sold and the transactions were completed on January 19, 2023.

The Petition requests:

1. That all acts of the Administrator set forth in the Petition be confirmed and approved;
2. That the Seventh and Final Account be settled, allowed and approved as filed;
3. Authority for Petitioner to pay himself \$26,714.79 in statutory administrator fees, and \$9,956 in extraordinary administrator fees for services performed for the estate over six years to market and sell the vacant lots and negotiate tax liability as described in Exhibit D to the Seventh and Final Account and Report;
4. Authority for Petitioner to pay attorney fees in the amount of \$26,714.79 in statutory fees, \$525.50 to reimburse for costs, and \$16,644.00 in attorney fees for extraordinary services due to the complexity of the estate, including the delay in opening probate due to international litigation over inheritance, refusal of decedent's spouse to cooperate, insolvency of the estate and the need to negotiate an estate tax settlement with the I.R.S., as more specifically described in Exhibit C to the Seventh and Final Account and Report;
5. Authority for Petitioner to pay the Internal Revenue Service all remaining assets of the estate in the amount of \$63,330.57 after all fees and costs are paid.

TENTATIVE RULING #4: ABSENT OBJECTION, THE PETITION GRANTED AS REQUESTED.

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621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

5. ESTATE OF KAMINE PP20200228

Status of Administration

Letters of Administration were issued on February 16, 2021. The Final Inventory and Appraisal was filed on July 30, 2021.

On February 16, 2023, Petitioner filed a Petition to Confirm Sale of Real Property. An Inventory and Appraisal was filed on March 2, 2023.

At the hearing to confirm sale of real property held on May 15, 2023, the court granted the Petition with the direction that the funds from the sale of the property be placed in an attorney trust account and held there until further order of the court.

TENTATIVE RULING #5: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 10, 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.

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6. ESTATE OF WEIZEN 22PR0006

Status of Administration

An Inventory and Appraisal was filed on May 11, 2022.

On April 12, 2023, the court received correspondence requesting a continuation of an April 17, 2023 hearing to allow time for the filing of a Final Petition and Accounting.

As of June 30, 2023, there was no Final Petition and Accounting in the court's file.

TENTATIVE RULING #6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 10, 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.

7. ESTATE OF OLSON 22PR0017

Petition for Final Distribution on Waiver of Account

Decedent died on September 15, 2021. Letters of Administration were issued on April 20, 2022. A Final Inventory and Appraisal was filed on September 26, 2022.

The executor, decedent's brother, is the only beneficiary of the estate, to whom distribution of the entire estate after fees and expenses is proposed. The executor waives compensation. All creditor claims have been satisfied.

The Petition requests:

1. That the estate be brought to a close without the requirement of an accounting;
2. That the Petition for Final Distribution and Waiver of Accounting be settled, allowed and approved as filed;
3. That all acts and proceedings of the Petitioner as executor of the estate be confirmed and approved;
4. That the assets of the estate and any property of the decedent not yet known or discovered be distributed as set forth in the Petition;
5. That payment of statutory attorney fees in the amount of \$11,006.19 and reimbursement to the executor of costs in the amount of \$435.00 be authorized.

TENTATIVE RULING #7: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED. A STATUS OF ADMINISTRATION HEARING IS SET AT 8:30 A.M. ON MONDAY, JULY 8, 2024 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 MARY FORNI PP20060187

Status of Administration

Related Case: Estate of Dennis Forni (PP20080058)

At the last hearing on this matter on July 21, 2022, the court noted that counsel for the estate, Michael Petersen, passed away.

At the last Status of Administration hearing, the court's Tentative Ruling indicated that the Administrator, Frances Forni, had passed away on May 18, 2021. Prior to her passing the Administrator indicated that she would not continue paying taxes on the property in the estate because it was valueless. The only remaining creditor in the estate, the California Department of Health Care Services, accepted a lien on the property.

The sole beneficiary of the estate declined to be appointed Administrator and does not want to take title to the property and intend to let it go to tax sale.

TENTATIVE RULING #8: ABSENT OBJECTION, PROBATE IS CLOSED AND THE MATTER IS DISMISSED DUE TO LACK OF PROSECUTION OF THE ACTION.

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 DANIELSON

23PR0079

Letters Testamentary

Decedent died testate on September 7, 2022, survived by three adult children. Petitioner is decedent's son.

The Will was lodged with the court on March 21, 2023. The Will waives bond and names Petitioner as Executor.

A Duties/Liabilities Form DE 147 was filed on June 2, 2023, and Form DE 147s was filed on March 21, 2023.

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

There is no proof of publication on file with the court.

TENTATIVE RULING #9: THE MATTER IS CONTINUED TO 8:30 A.M., FRIDAY, SEPTEMBER 11, 2023 IN DEPARTMENT NINE, ALLOW PETITIONER TIME TO FILE A PROOF OF SERVICE AND PROOF OF PUBLICATION 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.

10. ESTATE OF SILVA PP20210024

Petition for Final Distribution on Waiver of Account

Letters Testamentary issued on March 25, 2021. The Final Inventory and Appraisal was filed on February 8, 2023.

A Petition for Final Distribution on Waiver of Account was filed on March 13, 2023. Petitioners are adult children of the decedent and the sole beneficiaries of the estate and propose to divide the estate in two equal shares. Petitioners waive statutory compensation and waive the filing of a final account. There are no outstanding creditor claims against the estate.

The Petition requests:

1. That the estate be brought to a close without the requirement of an accounting;
2. That all reported acts and proceedings of the Petitioners as set forth in the Petition be confirmed and approved;
3. That distribution of the estate in petitioners' hands and any other property of decedent or the estate not now known or discovered be made as set forth in Exhibit C to the Petition.

TENTATIVE RULING #10: ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED.

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11. ESTATE OF SINGH PP20210152

Dismissal

Petitioner filed a Petition to be appointed executor of the decedent's estate on July 2, 2021.

There is no proof of service of the petition in the court's file, as is required by Probate Code § 8110. There is no proof of publication in the court's file, as required by Probate Code §§ 8120, 8121. There is no executed statement of Duties and Liabilities on file, as required by Probate Code § 8404.

Code of Civil Procedure § 583.420(a) provides that the court may dismiss an action for delay in prosecution if service is not made within two years after the action is commenced.

TENTATIVE RULING #11: THE MATTER IS DISMISSED.

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12. IN RE GARY LEE FULLERTON TRUST 22PR0069

Issues Conference

TENTATIVE RULING #12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 10, 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.

13. IN THE MATTER OF LINDA LOCKE 23PR0080

Petition for Order:

- 1. Approving First Account and Report of Trustee (August 10, 2014-December 22, 2016)**
- 2. Approving Second Account and Report of Trustee (December 23, 2016-January 31, 2023)**
- 3. Approving Reimbursements**
- 4. Enforcing Settlement Agreement**

On October 18, 1991, Richard and Lois Flowers executed the Flowers Family Living Trust, and executed a Quitclaim Deed transferring certain commercial real property to themselves as trustees of the Flowers Family Living Trust ("Trust"). See Petition, Exhibit J for a certified and contemporaneous abstract of that Trust document.

Lois Flowers died on May 2, 1994, and her Will has not been located. Richard Flowers died on December 24, 2021, and a copy of his 2003 Will is attached to the Petition, although an original has not been located. Following Lois Flowers' death, Richard Flowers executed a series of Grant Deeds to the commercial property that was part of the Trust assets:

1. August 30, 1994: Grant Deed to himself as trustee of the Lois Joan Flowers Irrevocable Trust, *see* Petition, Exhibit D;
2. October 6, 1995: Grant Deed to himself and his new spouse Troma J. Flowers as trustees of the Richard I and Troma J. Flowers Revocable Living Trust, *see* Petition, Exhibit E;
3. March 10, 2003: Grant Deed to Richard and Joan Flowers as trustees of the Richard and Joan Flowers Family Trust, *see* Petition, Exhibit F;
4. April 17, 2003, Grant Deed to correct the legal description of the property from the 2003 Deed, *see* Petition, Exhibit G;
5. December 4, 2003: Grant Deed from Richard and Joan Flowers as trustees of the Richard and Joan Flowers Family Trust back to the "Lois Joan Flowers Irrevocable Trust", *see* Petition, Exhibit H.

Currently, title to the property is held in the name of "Richard I. Flowers, Trustee of the Lois Joan Flowers Irrevocable Trust", *see* Petition, Exhibit I.

Petitioner currently receives checks payable to "Richard I. Flowers, Lois Joan Flowers Trust UA Flowers Family Living Trust 10/18/91" that appear to be dividend payments from Morgan Stanley stock held by the Trust. Petitioner believes that the "Lois Joan Flowers Trust" is the same as the "Lois Joan Flowers Irrevocable Trust."

The court's action is necessary because, despite Petitioner's diligent efforts, Trust documents cannot be located. Without the court's intervention, Petitioner and her brother are unable to distribute or manage the property that makes up the Trust assets. They cannot open bank accounts to receive rental income and pay expenses and they cannot update title to the property. They are unable to transfer the property by sale or to a new entity for management purposes without documentation of their authority.

The Petition requests the court to issue an Order that includes the following provisions:

- 1. Appointing Linda C. Locke as the trustee of the Lois Joan Flowers Irrevocable Trust, also known as the Lois Joan Flowers Trust ("Trust"), with the administrative powers as set forth in Probate Code § 16200 et seq., specifically including the powers set forth in Probate Code § 16222(b) to continue the operation of a business, and with other specific powers as set forth in the Petition.**

Petitioner believes that she should be appointed trustee because she believes that the Trust designated Petitioner and her brother Rick E. Flowers as co-trustees and Rick Flowers has declined to serve. A written declination on behalf of Rick Flowers has been filed with the court.

An Abstract of Trust attached to the Petition as Exhibit J provides that Rick Flowers and Linda Gaschler be appointed successor co-trustees to the Flowers Family Living Trust, dated October 18, 1991. Presumably this refers to Petitioner Linda Locke, as the 2003 Will of Richard Flowers references a son-in-law named Robin Locke. See Petition, Exhibit C.

- 2. Stating that the Trust terminated upon the death of Richard I. Flowers on December 24, 2021.**
- 3. Stating that Linda C. Locke and Rick E. Flowers were the beneficiaries of the Trust, with each entitled to fifty percent equal shares of the Trust assets.**

The reasons that Petitioner is informed and believes that Petitioner Linda C. Locke and Rick E. Flowers are the only remainder beneficiaries of the Trust and that the terms of the Trust provide that the Trust assets would be distributed in equal shares to his two children upon his death are as follows:

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- a. Petitioner remembers meeting with the settlor Richard Flowers and the attorney who drafted the trust following the death of Lois Flowers, where it was stated that that the Trust would remain in an irrevocable Trust for Richard Flowers' benefit during his lifetime, and then would be distributed in equal shares to his two children upon his death;
 - b. Petitioner and her brother are Richard and Lois Flowers' only two children, which is confirmed by the terms of the 2003 Will that is attached to the Petition as Exhibit C;
 - c. Petitioner is informed and believes that Richard Flowers' joint irrevocable trust with his surviving spouse Joan Flowers provides for the same distribution for Richard Flowers' separate property that is held in that trust and it is reasonable to assume that his first Trust provides for the same distribution;
 - d. Petitioner is informed and believes that Richard Flowers' surviving spouse Joan Flowers agrees that she has no interest in the Trust assets.
- 4. Instructing Linda C. Locke as trustee to take all actions necessary to administer the Trust, including payment of all of its liabilities, filing all required Trust tax returns and paying all taxes due, and distributing the remaining fifty percent Trust assets to the beneficiaries Linda C. Locke and Rick E. Flowers.**

The Petition cites Probate Code § 17200 as statutory authority for the requests listed in the Petition. Relevant sections of that statute as follows:

(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.

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

* * *

(4) Ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument.

* * *

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(8) Granting powers to the trustee.

* * *

(10) Appointing or removing a trustee.

* * *

(13) Approving or directing the modification or termination of the trust.

A written consent to terminate the trust on behalf of Rick Flowers is on file with the court.

TENTATIVE RULING #13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 10, 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. IN THE MATTER OF MARIA EURDES FONSECA DRYDEN

23PR0074

Petition for Probate

Decedent died intestate on December 19, 2022, survived by two adult children. Petitioner is decedent's daughter. Petitioner requests to be appointed Administrator of the estate, and requests bond be fixed at \$735,000.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on April 7, 2023.

Proof of service of Notice of the Petition was filed on April 21, 2023.

Proof of publication was filed on May 15, 2023.

TENTATIVE RULING #14: ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED. A STATUS OF ADMINISTRATION HEARING IS SET AT 8:30 A.M. ON MONDAY, JULY 8, 2024 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.

15. IN THE MATTER OF THE DONNA L. PHILLIPS FAMILY TRUST PP20210032

(1) Petition for Instructions

(2) Final Account and Distribution

At the hearing held on May 1, 2023, the court ordered the parties to meet and confer, and continued the hearing date.

Following is the tentative ruling from the May 1, 2023, hearing, which may be modified depending on the information that the parties provide to the court regarding the outcome of their meet and confer efforts:

Petition for Instructions

Petitioner is the successor trustee of the subject Trust. The settlor, Donna L. Phillips, passed away on June 9, 2012. Petitioner was appointed successor trustee following the removal of Tristina Davis and Katrina Deatherage as co-trustees on November 9, 2020, by order of the Yolo County Superior Court. Venue in Yolo County had been based on the former trustees' residence.

According to the verified Petition, there are three beneficiaries of the Trust, Milauna Kruse, Katrina Deatherage and Tristina Davis, each of whom is receive one third of the Trust assets on final distribution. The Trust assets consist solely of the proceeds from sale of a real property.

In the course of administering the Trust, Petitioner sold real property where beneficiary Tristina Davis and her husband were residing. Tristina Davis had claimed a life estate in the Trust, and the current trustee incurred attorney's fees and costs defending against this claim in order to be able to sell the property. This dispute resulted in Tristina Davis' refusal to cooperate with the realtor to market and sell the home. Eventually the home sold, at what may have been a reduced price due to the inability of the realtor to stage the property for sale without interference from the occupants.

Beneficiaries Katrina Deatherage and Tristina Davis, the former trustees, had transferred title to their own names and refinanced the home prior to its sale. The Yolo County Court determined that Tristina Davis had realized \$39,729 from refinancing the property while she served as trustee and that Katrina Deatherage realized \$12,984 from the refinance.

Beneficiary Milauna Kruse incurred attorney's fees and costs in the amount of \$14,871.29 in petitioning for the removal of co-trustees Tristina Davis and Katrina Deatherage. The court ordered an award of attorney's fees to Milauna Kruse, and this amount has been paid out of the Trust. Trustee intends to deduct this amount from shares of Tristina Davis and Katrina Deatherage in the final distribution.

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Beneficiary Katrina Deatherage assigned her interest to Tristina Davis, which may violate a spendthrift provision of the Trust. If this assignment is approved by the court, the trustee has calculated final distribution amounts to take this assignment into account.

If the court finds that Tristina Davis had realized \$39,729 from refinancing the property while she served as trustee, and if the court approved Katrina Deatherage's assignment of her interest to Tristina Davis, then the trustee proposes to deduct \$39,729 from the share of Tristina Davis.

The trustee further proposes to deduct from Tristina Davis' share \$13,243 that should have been paid to Milauna Kruse as her one-third share of the cash out refinance of the home, \$14,871 representing Milauna Kruse's attorney's fees award for having Tristina Davis and Katrina Deatherage removed as co-trustees, and \$12,894 that was realized by Katrina Deatherage from refinancing the property and which is attributable to Tristina Davis' share in accordance with the assignment of Katrina Deatherage's share to her.

Final Account and Distribution

Based upon all of these calculations, the final distribution that is proposed is as follows:

\$16,827.90 to Tristina Davis

\$55,055.09 to Milauna Kruse

Petitioner requests:

1. An order of the court approving the proposed distribution;
2. An order of the court determining the loan amount above the original loan amount from the settlor, to be surcharged or incurred to Tristina Davis;
3. An order approving the accounting of the trustee and concluding and closing the Trust and for final distribution of the remaining assets of the Trust;
4. Approval of all acts of the trustee and discharge of the duties and obligations of the trustee.

The court finds that Tristina Davis had realized \$39,729 from refinancing the property while she served as trustee, as was determined in the prior proceedings in Yolo County Superior Court.

The court approves the assignment of Katrina Deatherage's interest to Tristina Davis. Although this assignment is contrary to the spendthrift provision in the Trust document, the court finds that the misconduct of Katrina Deatherage and Tristina Davis while serving as trustees has interfered with the trustee's ability to comply with the letter of the Trust document and that Petitioner's proposed distribution is an acceptable solution for the purpose of achieving the settlor's intent under the present circumstances.

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The court finds that the loan amount on the real property located at 1713 Michigan Blvd. West Sacramento, CA 95691 that is above the original loan amount from the settlor should be surcharged to Tristina Davis. The court finds that the date of death loan amount on the real property located at 1713 Michigan Blvd. West Sacramento, CA 95691 is \$190,125.39 as set forth in the Petition, ¶ 14.

TENTATIVE RULING #15: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 10, 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.

16. THE PARKHURST TRUST PP20160118

Petition for Order:

- 1. Approving First Account and Report of Trustee (August 10, 2014-December 22, 2016)**
- 2. Approving Second Account and Report of Trustee (December 23, 2016-January 31, 2023)**
- 3. Approving Reimbursements**
- 4. Enforcing Settlement Agreement**
- 5. Removing Trustees and Appointing Professional Fiduciary**
- 6. Instructing Trustee to Administer Trust Pursuant to Settlement Agreement**

Case Management Conference

Exhibit A to the Petition sets forth the terms of the Parkhurst Revocable Living Trust, dated March 22, 1995 ("Trust").

The Petition requests the following Orders:

1. Approving First Account and Report of Trustee (August 10, 2014-December 22, 2016)

The Summary of Account of the First Account and Report of Trustee is attached to the Petition as Exhibit B, which includes Schedules A through L with detailed listings of assets and transactions. It does not contemplate any proposed distribution. Attorney's fees in the amount of \$3,682.50 were paid out.

The Petition requests that the First Account and Report of Trustee is settled, allowed and approved as filed.

2. Approving Second Account and Report of Trustee (December 23, 2016-January 31, 2023)

The Summary of Account of the Second Account and Report of Trustee is attached to the Petition as Exhibit C, which includes Schedules A through L with detailed listings of assets and transactions. It does not contemplate any proposed distribution. Attorney's fees in the amount of \$20,886.05 were paid out.

The Petition requests that the Second Account and Report of Trustee is settled, allowed and approved as filed.

3. Approving Reimbursements

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The Second Account and Report of Trustee specifies that Petitioner advanced \$108,157 in trust-related expenses during the Second Account period, including general Trust expenses, costs related to the Placerville property that is part of the Trust assets (e.g. property taxes, mortgage payments and insurance), and additional expenses related to co-trustee Linda Denton's occupancy of the Placerville property (e.g. utilities).

The Petition requests that the Trustee be instructed to reimburse Petitioner for those costs as soon as practicable from the first available Trust funds.

4. Enforcing Settlement Agreement

The Petition notes that the court retained jurisdiction to enforce the terms of the 2016 Settlement between the parties pursuant to Code of Civil Procedure § 664.6. See Transcript of hearing attached as Exhibit D to Petition, and April 18, 2019 Order attached as Exhibit E to Petition).

The Petition alleges that certain provisions of the 2016 Settlement have not been implemented, specifically, that the trustee has failed to:

- a. Transfer the Trust's interest in the Oklahoma Property to Mickell Parkhurst and Robert Parkhurst.
- b. Sell the trust's interest in the Placerville property and distribute the sale proceeds equally to Petitioner and Linda Denton, less the equitable liens in favor of the trustee of the Trust against each of their respective interests in the Placerville property.

Probate Code § 12002(c) requires an equitable lien be imposed against the distributable interest of Ray Parkhurst in the amount of \$38,624.45, and against the distributable interest of Linda Denton in the amount of \$69,592.71:

If income of specifically devised property is not sufficient to pay expenses attributable to the property, the deficiency shall be paid out of the estate until the property is distributed to the devisee or the devisee takes possession of or occupies the property, whichever occurs first. To the extent a deficiency paid out of the estate is attributable to the period that commences one year after the testator's death, whether paid during or after expiration of the one year period following the date of death, the amount paid is a charge against the share of the devisee, and the personal representative has an equitable lien on the specifically devised property as against the devisee in the amount paid.

In this case, the \$77,248.89 paid toward customary carrying costs of the Placerville property for the period commencing one year after the death of Joyce Parkhurst should be charged against the share of Petitioner and Linda Denton equally, and the \$30,968.26 paid toward expenses of the Placerville property related to Linda Denton's occupancy of the property should be charged solely against Linda Denton's distributable share.

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c. Wind up the affairs of the Trust and distribute the residual Trust property equally among the beneficiaries.

5. Removing Trustees and Appointing Professional Fiduciary

Probate Code § 15642 authorizes the court to remove a trustee on its own motion, or upon petition by a trustee or beneficiary under Probate Code § 17200. This includes situations where “hostility or lack of cooperation among cotrustees impairs the administration of the trust,” Probate Code § 15642(b)(3), or where the trustee declines or fails to act. Probate Code § 15642(b)(4).

In this case, the 2016 Settlement and 2019 Settlement Order resulted in the removal or resignation of two of the original four co-trustees, leaving only Petitioner and Mickell Parkhurst as co-trustees. In light of the failure to realize the implementation of the parties’ settlement over six years, and the hostility and lack of cooperation between the trustees, the Petition argues that the administration of the Trust has been impaired. The Petition alleges that Mickell Parkhurst agrees that there is a lack of cooperation and hostility among the co-trustees (citing Mickell Parkhurst’s Petition to Enforce Settlement at 5:11-22, 7:21-22) and that that Mickell Parkhurst has failed to implement the terms of the Trust.

If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court deems necessary.

Probate Code § 15642(e).

The Petition requests that Ray Parkhurst and Mickell Parkhurst be suspended as trustees of the Trust pending a determination of their removal, and that Renee Kowalik-Moss as interim trustee of the Trust.

The Petition further requests that Ray Parkhurst and Mickell Parkhurst be removed as trustees of the Trust upon the appointment of Renee Kowalik-Moss as trustee of the Trust.

6. That Notice of the Petition has been given as required by law.

The names and mailing addresses of each beneficiary of the Trust are set forth in Exhibit F to the Petition, and no requests for special notice have been filed.

7. Instructing Trustee to Administer Trust Pursuant to Settlement Agreement

8. That all acts and transactions of the trustee as set forth in the Petition or relating to the matters set forth therein, be ratified, confirmed and approved.

9. That the allegations of the Petition are true.

07-10-23
Dept. 9
Probate Tentative Rulings

TENTATIVE RULING #16: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 10, 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.