# 09-11-23 Dept. 9

#### Probate Tentative Rulings

#### 1. ESTATE OF WARD 22PR0328

#### **Final Distribution on Waiver of Account**

Letters Testamentary were issued on April 10, 2023. A Final Inventory and Appraisal was filed on June 16, 2023.

The Petition for Final Distribution was filed on July 21, 2023, and Notice of the hearing on the Petition was filed with the court on August 8, 2023.

Waivers of Account were executed by all of the heirs entitled to distributions under the estate and are attached to the Petition.

The proposed distribution of the estate is the distribution of all assets in equal shares to each of the two beneficiaries. Petitioner waives statutory fees.

The Petition requests:

- 1. The administration of the estate be brought to a close;
- 2. The report filed with the Petition be settled;
- 3. All acts and transactions of the Petitioner be approved;
- 4. The Administrator be authorized to pay statutory attorney fees in the amount of \$13,977.90;
- 5. Approval of distribution of the estate to the persons entitled to it pursuant to the Petition for Final Distribution;
- 6. Distribution of any other property of the estate acquired or discovered after this order is made, including any unused portion of the reserve for closing costs and taxes, be distributed to the beneficiaries listed in the Petition.

TENTATIVE RULING #1: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

#### **Probate Tentative Rulings**

#### 2. ESTATE OF HILLIARD 23PR0149

#### **Spousal Property Hearing**

Decedent died on January 17, 2021, survived by Petitioner (his spouse), a sibling and the adult child of a pre-deceased sibling.

Petitioner, the spouse of decedent, filed a Petition for Determination of Spousal Property (D Form DE-221) on July 12, 2023, requesting that the court find that certain corporate shares in a specified account be found to be community property that should pass to Petitioner as decedent's spouse.

The Petition does not specify when the parties were married or when the property at issue was acquired. In short, it is not clear whether the referenced corporate shares are community property or if they are decedent's separate property.

#### Probate Code § 13500 provides:

Except as provided in this chapter, when a spouse 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 . . and no administration is necessary.

Decedent's Will is attached to the Petition, and it contains the following declarations:

- "I have deliberately made provisions for all my heirs only in and through the Hilliard Family Trust." (Article One Paragraph C.)
- "I intend by this Will to dispose only of my interest in our community property that is not held in the Hilliard Family Trust, plus any separate property that may be in my probate estate at my death. Any reference in this Will to the residue of my estate shall not refer to any property or interests held in the Hilliard Family Trust." (Article One Paragraph D.)
- "I leave the residue of my estate to the trustees of the Hilliard Family Trust [to be] held, administered and distributed according to the terms of that trust . . . " (Article Two Paragraph A.)

The Will does not include any reference to particular bequests of property or any designation of separate versus community property. The Petition does not attach a copy of the Hilliard Family Trust.

Notwithstanding the statement in the Will that it intends "by this Will to dispose only of my interest in our community property that is not held in the Hilliard Family Trust, plus any separate property that may be in my probate estate at my death," there is no language in the Will specifying distribution of property other than the passages set forth above.

In short, it is not possible to determine from the contents of the Petition whether the subject corporate shares are community or separate property, in what name they are held, whether they are intended to be distributed through the Hilliard Family Trust, and if they are to be distributed through the Trust, what distribution was intended by the decedent.

TENTATIVE RULING #2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, SEPTEMBER 11, 2023, IN DEPARTMENT NINE.

#### 3. ESTATE OF GALLOWAY 22PR0093

#### **Review Hearing – Status of Administration**

Petitioner's counsel filed a Declaration on September 5, 2023, requesting that the matter be continued until after March 11, 2024, to allow Petitioner to accomplish the sale of the real property that is the principal asset of the estate.

TENTATIVE RULING #3: AT THE REQUEST OF PETITIONER, THIS MATTER IS CONTINUED TO 8:30 A.M. ON MONDAY, MARCH 18, 2024, IN DEPARTMENT NINE.

#### 4. ESTATE OF HENDERSON 23PR0165

#### **Letters of Administration**

Decedent died intestate on May 5, 2023, survived by four adult children. Petitioner is decedent's daughter.

The Petition requests full authority under the Independent Administration of Estates Act.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on July 21, 2023.

Proof of service of Notice of the Petition was filed on August 8, 2023.

Proof of publication was filed on August 28, 2023.

TENTATIVE RULING #4: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED. A STATUS OF ADMINISTRATION HEARING IS SET AT 8:30 A.M. ON MONDAY, SEPTEMBER 9, 2024, IN DEPARTMENT NINE.

# 09-11-23 Dept. 9

# **Probate Tentative Rulings**

#### 5. ESTATE OF SPALDING 22PR0257

#### **Final Distribution**

Letters Testamentary were issued on March 24, 2023.

A Final Inventory and Appraisal was filed on June 16, 2023.

Waivers of Account were executed by all of the heirs entitled to distributions under the estate.

Notice of the Petition was filed on August 8, 2023.

The proposed distribution of the estate is 100 percent to Petitioner as the sole beneficiary in decedent's Will. Petitioner as the named Executor in the Will waives statutory compensation.

The petition requests:

- 1. The administration of the estate be brought to a close;
- 2. The report filed with the Petition be settled;
- 3. All acts and transactions of the Petitioner be approved;
- 4. The Executor be authorized to pay statutory attorney fees in the amount of \$9,571.90;
- 5. Approval of distribution of the estate to the persons entitled to it pursuant to the Petition for Final Distribution;
- 6. Distribution of any other property of the estate acquired or discovered after this order is made, including any unused portion of the reserve for closing costs and taxes, be distributed to the beneficiary listed in the Petition.

TENTATIVE RULING #5: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

#### 6. ESTATE OF MCNULTY 22PR0099

Spousal Property Petition

Determine Succession to Real Property

At the hearing held on May 22, 2023, the court issued Letters of Administration to Teresa Bolduc, successor Administrator following the expiration of Letters of Special Administration that had been issued to Carrie Schroeder on November 23, 2022, which expired on April 30, 2023. At that hearing, the court continued the hearing on Carrie Schroeder's Petitions to Determine Succession to real Property and to Determine Spousal Property.

On February 6, 2023, Petitioner Schroeder filed a Notice of Hearing and a proof of service of the Notice. This Notice provided that Petitioner Schroeder had filed a Petition to Determine Succession to Real Property and Person[al] Property with respect to 1) a "home and all belongings at 6690 Tamalpais Rd. Garden Valley CA 95633" and 2) a "Ford 2006 truck vin # 1FTWW31P46EC44641." A hearing date was set for April 3, 2023.

Although Petitioner Schroeder also filed a Petition to Determine Spousal Property that was also set for hearing on April 3, 2023, that Petition was not included in the Proof of Service. Only the Petition to Determine Succession to Property was listed on the Proof of Service that was filed on February 6, 2023.

On December 28, 2022, Petitioner Schroeder filed a civil subpoena duces tecum for production of documents directed to Jonathan Stark of Diebold/Nixdorf, decedent's employer. Requested documents included 1) decedent's W2 forms for 2021/2022 through March 4, 2022; 2) records of withdrawals from decedent's account; 3) amounts paid out of decedent's life insurance, retirement and investment accounts; 4) personal documents from decedent's laptop; and 5) any documents related to decedent that were not addressed to 6990 Tamalpais Rd., Garden Valley, CA 95633. The purpose of this subpoena was generally to prove that Petitioner Schroeder and decedent's children were the rightful heirs of decedent.

Documents responsive to the December 28, 2022 subpoena are among the multiple attachments appended to Petitioner Schroeder's declaration (Declaration Non Confidential of Documents) filed on March 22, 2023.

On March 22, 2023, Petitioner Schroeder filed a second declaration (Declaration Non Confidential Statement) in support of her Petition to Determine Succession to Real Property and Personal Property. The declaration included multiple attachments generally supporting the

proposition that Petitioner Schroeder and decedent shared various accounts related to the real property and the vehicle that are the subject of the petition.

On May 16, 2023, Petitioner Schroeder filed an additional Declaration, dated May 16, 2023, in support of her various Petitions and attaching documents.

On April 24, 2023, Petitioner Schroeder filed a subpoena duces tecum issued to Advent Credit Union, requesting records that would establish transfers of funds between Petitioner Schroeder and decedent "to show Ruby McNulty received monies from decedent, . . . life insurance policies and to show where those monies were distributed to."

Also on April 24, 2023, Petitioner Schroeder filed a subpoena duces tecum issued to Redwood Credit Union to "show Ruby McNulty received monies belonging to decedent, Mark McNulty's children."

Most recently, on September 5, 2023, Petitioner Schroeder filed a Proposed Order that would find that the following property would pass to Schroeder as surviving spouse pursuant to "quasi-community property laws" and a referenced Will of decedent:

- Real property located at 6990 Tamalpais Rd. Garden Vally, CA
- All belongings on or in the real property
- 2006 Ford truck
- All monies of Carrie Schroeder and decedent listed in decedent's Will

Petitioner Bolduc has filed an Objection to Petitioner Schroeder's outstanding Petitions.

Petitioner was not decedent's spouse. Petitioner has not cited any applicable laws that would entitle her to inherit any property from decedent. Nor has Petitioner produced any document that would qualify as a Will designating her as a beneficiary of decedent's estate. The Petitions are denied.

TENTATIVE RULING #6: THE PETITION TO DETERMINE SPOUSAL PROPERTY AND THE PETITION TO DETERMINE SUCCESSION TO REAL PROPERTY ARE DENIED. A STATUS OF ADMINISTRATION HEARING IS SET AT 8:30 A.M. ON MONDAY, SEPTEMBER 9, 2024, IN DEPARTMENT NINE.

#### 7. 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.

Notice of the hearing on the Petition was filed on July 31, 2023.

Proof of publication was filed on August 18, 2023.

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, SEPTEMBER 9, 2024, IN DEPARTMENT NINE.

#### 8. ESTATE OF CHISHOLM

22PR0159

Inventory and Appraisal Status of Administration

TENTATIVE RULING #8: AN INVENTORY AND APPRAISAL HAVING BEEN FILED ON AUGUST 15, 2023, THE MATTER IS TAKEN OFF CALENDAR. A STATUS OF ADMINISTRATION HEARING IS SET AT 8:30 A.M. ON MONDAY, SEPTEMBER 9, 2024, IN DEPARTMENT NINE.

#### 9. ESTATE OF LAMMA 22PR0151

**Review Hearing – Status of Administration** 

The most recent filing in this matter is a Notice of the Executor's intention to sell the real property belonging to the estate.

TENTATIVE RULING #9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, SEPTEMBER 11, 2023, IN DEPARTMENT NINE.

#### 10. ESTATE OF SBRAGIA 23PR0129

#### **Spousal Property Petition**

Decedent died intestate on September 24, 2022, and is survived by Petitioner (his spouse) and three adult children. Petitioner requests a determination that specified real property pass to the surviving spouse of decedent without administration.

The Petition attaches decedent's Will, which states in Paragraph 2: "I confirm to my spouse her interest in our community property." In Paragraph 3 the Will provides that "I give the remainder of my estate to the then acting trustee of that trust created by me and my spouse and restated the same date as this Will." The trust document is not included in the documents filed with the court.

The real property that is the subject of this petition references a single property located on 46th Street in Sacramento, but, by listing one-half of the interest in the property under Paragraph 7a of the DE-221 Form (Spousal Property Petition), the Petition indicates that half interest as decedent's separate property, and the other half interest is listed under paragraph 7b of the DE-221 Form as community property.

The result may differ depending on whether the real estate is held as separate or community property, or, as the Petition seems to indicate, is held in part as separate property and in part as community property. The Will specifies that anything that does not pass without administration to decedent's spouse through community property laws is to be distributed to the Trust, which could result if half of the real estate is held as decedent's separate property. The nature of the title to the real estate must be determined before the Petition can be granted. See Probate Code § 13656.

At the hearing on July 17, 2023, Petitioner indicated an intention to file an amended Petition and the court continued the hearing.

TENTATIVE RULING #10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, SEPTEMBER 11, 2023, IN DEPARTMENT NINE.

#### 11. ESTATE OF SHEPHERD 23PR0153

#### **Petition to Determine Succession to Real Property**

Petitioner is decedent's spouse. Decedent died on February 14, 2021, more than 40 days before the Petition was filed. The Petition declares that the gross value of the property subject to the Petition is less than \$166,250. An Inventory and Appraisal was filed on July 13, 2023, confirming this valuation.

Notice of the hearing on the Petition was filed on September 1, 2023.

The Petition states that Petitioner is the trustee of a trust designated in the Will to receive property. In that capacity Petitioner is a beneficiary who succeeds to the property under the decedent's Will. Decedent's Will, attached to the Petition, devises any real or personal property to the trustee of the Shepherd Trust, and declares that it is not the decedent's intent to subject the property added to the Trust by the Will to the jurisdiction of the probate court. (Article Three.)

Probate Code §§ 13151 allows succession without probate under the following conditions:

[I]f a decedent dies leaving real property in this state and the gross value of the decedent's real and personal property in this state does not exceed one hundred sixty-six thousand two hundred fifty dollars (\$166,250), . . . , and 40 days have elapsed since the death of the decedent, the successor of the decedent to an interest in a particular item of property that is real property, without procuring letters of administration or awaiting the probate of the will, may file a petition in the superior court of the county in which the estate of the decedent may be administered requesting a court order determining that the petitioner has succeeded to that real property.

TENTATIVE RULING #11: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

#### 12. IN THE MATTER OF THE DEL VECCHINO FAMILY REVOCABLE TRUST 23PR0154

# Petition for Instructions Petition for Removal of Co-Trustee

Decedent died on June 7, 2023, and was survived by four adult children, including Petitioner and Respondent, who were named co-trustees of the Del Vecchio Family Revocable Trust ("Trust"), executed on December 19, 2006, and restated as of April 24, 2023. The Trust states that trustees may only be removed for cause upon petition of a beneficiary to the court. Section 3.03.

The verified Petition requests the court, in accordance with Probate Code § 17200 to issue instructions to Respondent Kristen Marsh to submit an account, inventory and appraisal and proposed distribution of the Trust in compliance with the Probate Code, and for an Order removing Respondent Kristen Marsh as successor co-trustee.

Petitioner declares that Respondent is a resident of the State of Florida, and that on a recent visit to California she disposed of and distributed Trust assets after unilaterally assigning value to the assets and without any accounting, inventory or appraisal.

In light of this conduct and the fact that Respondent is not a resident of California and as such is not able to actively participate in the Trust administration, Petitioner requests removal of the Respondent as co-trustee. In the alternative, Petitioner requests appointment of a professional fiduciary to act as co-trustee with Petitioner.

Probate Code § 15642 provides, in pertinent part:

- (a) A trustee may be removed in accordance with the trust instrument, by the court on its own motion, or on petition of a settlor, cotrustee, or beneficiary under <u>Section</u> 17200.
- (b) The grounds for removal of a trustee by the court include the following:
  - (1) Where the trustee has committed a breach of the trust.

\* \* \*

- (3) Where hostility or lack of cooperation among cotrustees impairs the administration of the trust.
- (4) Where the trustee fails or declines to act.

\* \* \*

(9) For other good cause.

\* \* \*

(e) 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.

Respondent objects to the Petition. To the extent Petitioner requests information regarding the Trust or an account of assets and expenditures, Respondent points out that Probate Code § 17200(b)(7) allows a beneficiary to petition a court to instruct the Trustee only after 60 days following the beneficiary's reasonable written request for an account or information:

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

\* \* \*

- (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 <u>Section 16061</u> 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 <u>Section 16064</u>, 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.

In this case, the Petition was filed on July 13, 2023, without having made such a request, and less than 60 days after the decedent died on June 7, 2023. Further, Respondent notes that Section 10.13 of the Trust provides for annual reports. Respondent attaches a report to the Objection as Exhibit E showing expenditures between June 6-July 31, 2023, and that report was transmitted to the Trust beneficiaries on August 9, 2023.

To the extent Petitioner objects to the sale of personal property at a garage sale, Respondent attaches as Exhibit B to the Objection a series of text messages through which Petitioner was informed in advance of and assented to the sale.

Given the prerequisites set forth in Probate Code § 17200 before a court may be petitioned to instruct a trustee to provide an account, the petition for instructions is denied as premature. Since the trustee has not violated any duty to the Petitioner, and having been presented with evidence of the Petitioner's knowledge of and assent to the disposal of personal property in Respondent's Objection, the Petition to remove the Respondent as co-trustee is denied.

TENTATIVE RULING #12: THE PETITION FOR INSTRUCTIONS AND TO REMOVE RESPONDENT AS CO-TRUSTEE IS DENIED.

#### 13. JOHN M. 'MIKE' SHIELDS REVOCABLE LIVING TRUST

22PR0317

#### **Accounting Hearing**

Petitioners, Ruby Shields and Paul Shields, are beneficiaries of the John M. "Mike" Shields Revocable Living Trust, dated August 11, 2000, and with a First Amendment dated March 26, 2021 ("Trust").

On December 9, 2022, Ruby Shields and Paul Shields filed a Petition to confirm trust terms, for an order to compel trustee to account, request for financial documents, and request for attorney fees and costs. Petitioners are the children of John M. "Mike" Shields, the settlor and initial trustee of the Trust.

Respondent Leslie C. Myrick was the girlfriend of the decedent, the acting successor trustee of the Trust, and also a beneficiary of the Trust. The Petition requests that respondent provide a full and complete copy of the Trust; that she prepare and file a complete account and report of her acts as successor trustee from April 15, 2022 (date of settlor's death) to the present; that she be instructed to petition this court for settlement of the account and give notice of the hearing on the petition, and that Respondent provide documentation for any and all financial accounts owned by the settlor as of the date of his death, including accounts held in joint tenancy with any other person or assets payable on death through beneficiary designation. Petitioners also request attorney fees and costs.

On January 12, 2023, Respondent filed a response and objection to the Petition. Specifically, Respondent objects to an award of attorney fees and costs as there was no formal or specific demand to do an accounting. Respondent agrees to provide an account of the Trust's assets and expenses as of the settlor's date of death to the present, and then annually as required by the Probate Code. Respondent states that a copy of the terms of the Trust as possessed by Respondent was provided to the beneficiaries along with the notice of trust administration. She will collect and provide whatever other documents she has.

At the hearing of March 13, 2023, the court ordered an accounting to be filed, served and delivered to the office of counsel for Petitioners by May 15, 2023.

On May 10, 2023, Respondent filed a First Accounting. At a hearing held on May 22, 2023, the court ordered all documents regarding the evaluation of personal property and the Trust be given to counsel for Petitioners, and that any declarations regarding the Trust be filed by June 16, 22023. The hearing was then continued.

On June 5, 2023, Respondent filed a Declaration, dated May 24, 2023, stating that she has not been able to locate a signed original of the Trust document, or any entire copy of the

initial Trust. The Declaration further states that Respondent has made diligent efforts to value the settlor's music collection.

On September 1, 2023, Petitioners filed a status report with the court:

- (1) indicating that Respondent has not provided complete information about decedent's non-Trust assets, and
- (2) requesting that Respondent be disqualified from serving as Executor and that she be replaced with the named alternate, Ruby Shields.

TENTATIVE RULING #13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, SEPTEMBER 11, 2023, IN DEPARTMENT NINE.

#### 14. MATTER OF THE SADDLEROAD TRUST

PP20210130

#### **Petition to Suspend Trustee Powers**

According to the Tentative Ruling dated January 12, 2022, declarations of unsuccessful due diligence attempts to personally serve the respondent trustee/beneficiary were filed on July 21, 2021. At the hearing on November 3, 2021, the court granted Petitioner's oral motion to serve the respondent by publication.

This matter was continued from January 9, 2023, and again from March 27, 2023. At the hearing of June 5, 2023, counsel for Petitioner appeared and was ordered by the court to submit an application and Order for publication, and the hearing date was continued.

Nothing has been filed with the court since the June 5, 2023, hearing date. To date there is still no proof of service by publication of the notice of hearing or service of a copy of the Petition on respondent in the court's file.

TENTATIVE RULING #14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, SEPTEMBER 11, 2023, IN DEPARTMENT NINE.

#### **15. ZAROW TRUST 23PR0145**

**Review Hearing** 

TENTATIVE RULING #15: THIS MATTER IS CONTINUED TO MONDAY, 8:30 A.M. ON OCTOBER 9, 2023 TO BE HEARD CONCURRENTLY WITH THE OBJECTION THAT WAS FILED ON SEPTEMBER 5, 2023.