

1. **PP20210165** **ESTATE OF JACKSON**

**Petition for Letters Testamentary – Nothing New Filed**

A Petition for Probate of Will and a Petition for Letters of Administration were filed on July 21, 2021.

A Petition for Letters of Special Administration were filed on July 28, 2021 and Gayle Bigler was appointed Special Administrator on July 30, 2021. Amended letters of Special Administration were filed on August 31, 2021.

A Will was lodged on March 16, 2022, and a Notice of Lodging the Will was filed with the court but there is no proof of service on file.

This matter was continued from July 27, 2022 and December 7, 2022, and March 20, 2023 due to defects in the Petition. The court's March 20, 2023 tentative ruling noted that: 1) there are no proofs of service of the notice of the petition on the alternate executor Craig Jackson, 2) there is no Duties and Liabilities statement (Form DE-147/147s) in the court's file as required by El Dorado County Superior Court Local Rules, Rule 10.02.10, and 3) there is no proof of publication in the court's file.

There were no appearances at the hearing scheduled for June 12, 2023. Nothing new has been filed since March 16, 2022.

**TENTATIVE RULING #1: THE MATTER IS CONTINUED TO MONDAY, DECEMBER 5, 2023, FOR HEARING ON AN ORDER TO SHOW CAUSE WHY THE MATTER SHOULD NOT BE DISMISSED, WITHOUT PREJUDICE, FOR DELAY IN PROSECUTION PURSUANT TO CODE OF CIVIL PROCEDURE § 583.410, 583.420(A)(2)(b) AND CALIFORNIA RULES OF COURT, RULE 3.1340.**

**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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2. **PP20210180** **ESTATE OF TANIS**

- (1) Inventory & Appraisal**
- (2) Status of Administration**

**TENTATIVE RULING #2: INVENTORY AND APPRAISAL HAVING BEEN FILED WITH THE COURT ON SEPTEMBER 27, 2023, THE HEARING ON INVENTORY AND APPRAISAL IS DROPPED FROM CALENDAR. APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, OCTOBER 9, 2023, IN DEPARTMENT NINE FOR THE STATUS OF ADMINISTRATION HEARING. A STATUS OF ADMINISTRATION HEARING IS SET AT 8:30 A.M. ON MONDAY, OCTOBER 9, 2024, IN DEPARTMENT NINE.**

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3. **PP20210150** **ESTATE OF SCOTT**

**Petition for Letters Testamentary**

This Petition was filed on July 1, 2021. This matter was continued from September 22, 2021, January 5, 2022, February 2, 2022, and March 9, 2022.

At the hearing on September 22, 2021, petitioners Steven R. Scott and Vicki Lynette Reese stated that the original will was in a safe deposit box that could not be accessed until letters were issued. In a related matter, Estate of Robert Scott, PP20210149, an Order for Special Administration was entered on July 12, 2022, to allow the same petitioners access to the safe deposit box. However, Letters of Special Administration were not submitted or issued. To date, Letters of Administration still have not been issued for either estate.

The original Will has not yet been lodged with the court.

On January 30, 2023, Petitioner appeared and requested additional time to lodge the will and the matter was continued to May 15, 2023. There were no appearances on May 15, 2023, and the matter was continued to July 3, 2023. On July 3, 2023, there were no appearances and the matter was continued to October 9, 2023.

**TENTATIVE RULING #3: THE MATTER IS CONTINUED TO MONDAY, DECEMBER 5, 2023, FOR HEARING ON AN ORDER TO SHOW CAUSE WHY THE MATTER SHOULD NOT BE DISMISSED, WITHOUT PREJUDICE, FOR DELAY IN PROSECUTION PURSUANT TO CODE OF CIVIL PROCEDURE § 583.410, 583.420(A)(2)(b) AND CALIFORNIA RULES OF COURT, RULE 3.1340.**

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4. **23PR0015** **ESTATE OF NELSON**

**Final Distribution on Waiver of Account**

Decedent's Will was admitted to probate on April 24, 2023, and Letters Testamentary were issued to Petitioner on April 27, 2023.

A Final Inventory and Appraisal was filed on May 26, 2023, and a Supplemental Inventory and Appraisal was filed on September 14, 2023.

Waivers of Account were executed by the trustee and the sole beneficiary of the Chris C. Nelson and Linda M. Nelson 2009 Trust, which is the sole beneficiary of the estate.

Notice of the Petition was filed on September 21, 2023.

The proposed distribution of the estate is to Petitioner as the trustee of the Chris C. Nelson and Linda M. Nelson 2009 Trust, which is the sole beneficiary of the estate.

The Petition requests:

1. The administration of the estate be brought to a close without the requirement of an accounting;
2. All acts and proceedings of the Petitioner be confirmed and approved;
3. Petitioner be authorized to pay statutory attorney fees in the amount of \$29,581.23;
4. Petitioner be authorized to pay herself \$5000, which is less than the amount that would be calculated as statutory compensation;
5. Distribution of the estate in Petitioner's hands and any other property of the estate not now known or later discovered or in which the estate may have any interest be distributed as set forth in the Petition.
6. Upon filing of receipts that Petitioner be discharged and Petitioner and her sureties be discharged and released from all liability that may be incurred hereafter.

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

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**5. 22PR0152 ESTATE OF POWERS**

**Petition for Letters of Administration**

Petitioner, a resident of Connecticut and the sole heir of decedent, filed a Petition for probate on May 20, 2022, which could not be granted due to several deficiencies described the tentative ruling for the hearing on the Petition held on August 31, 2022. Further continued hearings on the Petition were held on March 13, 2023, and June 12, 2023, at which there were no appearances.

On March 13, 2023 the Petitioner filed a request for dismissal and the court's tentative ruling noted that the proof of service of the notice of the hearing did not show any person on whom it had been served.

The court notes that Petitioner is the sole living heir of decedent and there is no other person who is entitled to or who has requested special notice of this proceeding. Accordingly, the matter is dismissed at Petitioner's request.

**TENTATIVE RULING #5: THE MATTER IS DISMISSED AT PETITIONER'S REQUEST.**

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6. 23PR0209

**IN THE MATTER OF ARTHUR ADNEY****Spousal Property Petition**

The trustee of the Mary Ann Adney Revocable Living Trust of 2017 ("Trust") and executor of the Mary Ann Adney estate has filed this Petition to requesting an Order determining that certain real property in El Dorado County is part of the Trust estate.

At the time of Mary Ann Adney executed the Trust, the Trust document included a "Schedule A, Initial Trust Property" which expressly listed the real property as a Trust asset. However, at the time of decedent's death, title to the real property was held by "Arthur C. Adney and Mary Adney, Husband and Wife", and was never transferred to the name of the Trust. Article 3.01 of Mary Ann Adney's Will provided that the residue of her estate should pass in full to the Trust.

Probate Code § 850 permits a trustee who has a claim to property, the title to or possession of which is held by another, to file a petition requesting that the court make an order pursuant to Probate Code § 856 authorizing and directing the person having title to or possession of real property to execute a conveyance or transfer to a person entitled thereto, or granting other appropriate relief. When the matter concerns a decedent estate, notice shall also be given to any heir or devisee whose interest may be affected by the Petition in accordance with Probate Code § 1200. Proof of service of notice of the hearing on the Petition was filed with the court on September 21, 2023.

Probate Code § 15200 provides for the creation of a trust where there is a "declaration by the owner of that property that the owner holds the property as trustee." *See also, Estate of Heggstad*, 16 Cal.App.4<sup>th</sup> 943 (1993). In this case, the express inclusion of the subject real property in "Schedule A – Initial Trust Assets" amounts to a declaration of trust by the decedent. Further, decedent's Will providing that the residue of her estate should pass in full to the Trust also indicated her intention to include the subject real property among the Trust's assets.

The beneficiaries of the Trust have been notified of the Petition and no objection has yet been filed, although the beneficiaries are able to present their objections, if any, at the hearing.

**TENTATIVE RULING #6: ABSENT OBJECTION, THE 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. 23PR0215

**IN THE MATTER OF HUGHES REVOCABLE LIVING TRUST****Petition to Confirm Trust Assets**

Decedent Timothy Hughes was the surviving settlor of the Timothy Hughes and Claudia Hughes Revocable Living Trust, dated November 18, 2021 ("Trust") when he died on July 7, 2023. See Petition, Exhibit A. Petitioner is nominated as the successor trustee of the Trust upon the death of the settlors. See Petition, Exhibit D (Second Amendment of Trust, dated April 24, 2023). Decedent's Will distributes all assets of decedent's estate to the Trust. See Petition, Exhibit G.

As evidence of the decedent's intent to include this account as a Trust asset, Petitioner indicates:

1. "Schedule of Trust Assets", which lists intended Trust assets, includes "Banking Accounts", including "1<sup>st</sup> United Credit Union" checking and savings account. See Petition, Exhibit F.
2. Decedent's Will specifies that "all property, of whatever nature and kind, wherever situated, shall be distributed to my revocable living trust." See Petition, Exhibit G.

The Petition requests an Order:

1. Confirming the validity of the Trust;
2. Confirming Linda Logan as the trustee of the Trust;
3. Confirming that decedent's interest in the funds held in the specified First US Community Credit Union account are an asset of the Trust. The account is currently in the name of Timothy and Claudia Hughes. See Petition, Exhibit E.

Probate Code § 850 permits a trustee who has a claim to property, the title to or possession of which is held by another, to file a petition requesting that the court make an order pursuant to Probate Code § 856 authorizing and directing the person having title to or possession of real property to execute a conveyance or transfer to a person entitled thereto, or granting other appropriate relief. When the matter concerns a decedent estate, notice shall be given to any heir or devisee whose interest may be affected by the Petition in accordance with Probate Code § 1200. Proof of Service of the notice of the hearing to the beneficiaries of the Trust was filed with the court on September 11, 2023.

Probate Code § 15200 provides for the creation of a trust where there is a "declaration by the owner of that property that the owner holds the property as trustee." See also, *Estate of Heggstad*, 16 Cal.App.4<sup>th</sup> 943 (1993).

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In this case, the court cannot entirely rely on the Schedule of Trust Assets as a declaration of trust, because the name of the institution listed in that document is the “1<sup>st</sup> United Credit Union”, whereas the account that is the subject of the Petition is held by the “First US Community Credit Union.” However, the decedent’s Will expresses the intention that “all property, of whatever nature and kind, wherever situated, shall be distributed to my revocable living trust.” The court finds that statement to be adequate to support a finding that the decedent’s intent was to include this account among the Trust assets. Although there is an alternative course of processing this account as a small estate outside of probate, that procedure would result in this account bypassing the minor’s trusts that decedent established for the benefit of his children.

Any interested party may present their objections to the Petition, if any, at the hearing.

**TENTATIVE RULING #7: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.**

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8. 22PR0317

**JOHN M. 'MIKE' SHIELDS REVOCABLE LIVING TRUST****Accounting**

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, 2023. 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.

At the hearing held on September 11, 2023, the court continued the hearing to allow Respondent time to finish collecting and distributing assets. The court ordered the trustee to provide authority regarding the use of Trust funds to pay attorney's fees.

On September 18, 2023, counsel for the trustee filed a Declaration describing legal services provided in the course of preparing an accounting and responding to other issues raised by Trust beneficiaries and stating that there are fees due for such services that are reimbursable from Trust assets. In response to the Order from the court to provide authorities on the subject, the Declaration cites Donahue v. Donahue (2010) 182 Cal.App.4<sup>th</sup> 259, 267 ("Preparing the accounting and responding to the beneficiaries; objections to that accounting are aspects of trust administration."). The Declaration also cites Estate of Gump (1991) 1 Cal.App.4<sup>th</sup> 582, 604 ("It is established that attorney fees and litigation costs incurred in the trustee's *successful defense* of an action brought by the beneficiary are recoverable. *Estate of Cassity*, 106 Cal.App.3d 569, 574; *cf.*, *Estate of Trynin* (1989) 49 Cal.3d 868, 874 [782 P.2d 232].")

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

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9. 23PR0145

**THE ZAROW TRUST, ESTABLISHED OCTOBER 17, 1985****(1) Petition for Settlement and Approval and for Trustee Fees****(2) Hearing on Objection to Petition**

Decedent, settlor of the Zarow Trust ("Trust"), dated October 17, 1985, and restated on April 4, 2017 (Petition, Exhibit A), died on May 18, 2021. Petitioner Angela Christensen was appointed co-trustee on June 27, 2018, which is the date that the settlor executed a First Amendment to the Trust. Petition, Exhibit B. While the Trust is not subject to continuing court supervision, Petitioner requests court approval of the final account and distribution proposed by the Petition. There are eight Trust beneficiaries, including Petitioner, who are the surviving children of the settlor.

Exhibits D, E and F to the Petition are the accounts of the administration of the Trust for the years 2021, 2022 and 2023, respectively.

Notice of the hearing on the Petition was filed on July 14, 2023.

The proposed distribution of the estate includes:

**1. Reimbursement to Petitioner/Trustee**

Petitioner has submitted a Declaration, dated July 3, 2023 ("Christensen Declaration"), in which she details the need for her expenditure of \$51,041.83 for which she claims reimbursement from the Trust between 2019 and 2021. See Christensen Declaration, Exhibit A. A catalogue of travel and the reasons required for travel and other expenses is detailed in Christensen Declaration, Exhibit B. Payment of attorney's fees for legal services to the estate are also included in these amounts. Essentially, Petitioner served as her mother's caregiver since 2019 and managed the estate assets after her mother's death in 2021, all of which required frequent travel between her home in El Dorado County to her mother's home in Southern California. Petitioner has already reimbursed herself partially from the Trust in the amount of \$31,667.00 and requests the court's authorization to reimburse herself the additional \$19,403.48.

**2. Payment of Trustee**

Petitioner seeks the court's approval of a payment to her of \$22,500 on November 5, 2021, an amount that is not included in the reimbursement calculation above. This amount is authorized by the Trust ¶ 4.03:

In lieu of Trustee compensation, the Trustee shall distribute the sum of Twenty-Two Thousand Five Hundred Dollars (\$22,500) to the person who shall then be serving as the Trustee of this Trust.

The Trust (Petition Exhibits A and B) provides for payment of "as much of the principal of the trust property as is necessary in the Trustee's discretion for the Trustor's proper health, support, maintenance comfort and welfare." Article 3, ¶3.01.

**3. Disbursement to Heirs**

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The Petition proposes dividing the remainder of the estate, after deductions for reimbursement detailed above, equally between the eight children of the settlor, which amounts to a payment of \$36,899.75 to each surviving child, including Petitioner.

The Petition requests the court for:

1. Settlement and allowance of the First and Final Account and Report and approval and confirmation of the acts of Petitioner as Trustee
2. Approval and confirmation of all reported acts and transactions of Petitioner as Trustee
3. Authorization for Petitioner to pay herself the sum of \$19,403.48 and for reimbursement of additional expenses
4. Authorization for Petition to distribute \$35,899.75 to each of the eight beneficiaries.

Objection to First and Final Account and Report of Trustee and Petition for Approval & Trustee Fees

Three trust beneficiaries, Chris Zarow, Diana Gazzolo and Mary Southern, have filed an Objection to the trustee's Account and Petition for Settlement. The Objection lists a general objection that there is no purpose specified for each of the disbursements. The Objection lists the following specific objections:

5. Objectors request an inventory of all assets on hand from the decedent's date of death.
6. Objectors request a copy of each bank statement, credit card statement and all cancelled checks from all trust accounts.
7. Objectors request that all reimbursement requests for caregiving of the decedent prior to decedent's death be denied.
8. Objectors request receipts for all reimbursement requests and an explanation for each request.
9. Objectors request an explanation for the reimbursement of \$25,667.05 as detailed in Petition Exhibit D, Schedule C, page 12.
10. Objectors request a statement from PNA Life Insurance, which they believe amounted to \$5,000, and not the \$4,145.23 as stated in the accounting.
11. Objectors request a final closing statement for the sale of the real property.
12. Objectors request receipts for distributions made, including receipts for carpet cleaning, Target purchases and other purchases made on behalf of the Trust.
13. Objectors request a detailed description of the airline travel and restaurant purchases throughout the accounting period, including restaurant charges and those made after the decedent's death.
14. Objectors request clarification for charges for Legacy Box.

15. Objectors request clarification as to why trustee is requesting reimbursement for dates prior to the decedent's death which should have been covered by the \$22,500 payment made to the trustee.

With respect to Specific Objection #3, the court notes that the trust expressly provides that during the lifetime of the Trustor, “[i]f at any time, the Trustor has become physically or mentally incapacitated, . . . the, Trustee shall . . . apply for the Trustor’s benefit, the net income of the trust property . . . or . . . as much of the principal of the trust property as is necessary in the Trustee’s discretion for the Trustor’s proper health, support, maintenance, comfort and welfare.” Petition, Exhibit A, Trust Section 3.01.

With respect to Specific Objection #11, the court notes that the \$22,500 that is to be distributed to the Trustee is “in lieu of compensation.” Petition, Exhibit A, Trust Section 4.03(A). Section 5.01(m) separately authorizes the trustee to advance funds to the Trust for any purpose, and that such advances are to be paid out of the principal or income of the Trust. Further, Probate Code § 15680 states that “if the trust instrument provides for the trustee’s compensation, the trustee is entitled to be compensated in accordance with the trust instrument.” The Probate Code distinguishes trustee compensation from reimbursement to the trustee of “expenditures that were properly incurred in the administration of the trust.” Probate Code § 15684.

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

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