

**1. PP20210026 ESTATE OF WARDEN**

**Final Discharge Hearing**

Petitioner requests to court for an Order terminating the administration of the estate and discharging the personal representative pursuant to Probate Code § 12251.

Letters of Administration were issued on August 21, 2021.

The only asset of decedent's estate has been distributed pursuant to an Order to Determine Succession to Real Property (DE-310) pursuant to Probate Code § 13150, et seq. Decedent's two-thirds share of the real property was distributed in equal shares to four beneficiaries named in his Will, which was lodged with the court on February 5, 2021.

**TENTATIVE RULING #1: 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.**

**2. 23PR0174 IN THE MATTER OF EBELING FAMILY TRUST SURVIVOR'S TRUST**

**Petition to Appoint Successor Trustee and to Ascertain Beneficiaries**

The Trust was established by George F. Ebeling and Melva Lee Ebeling on August 2, 1995.

The Petition and Objection to the Petition present multiple issues associated with a series of amendments to the Trust, and several designated trustees and beneficiaries who have predeceased the settlor.

However, as an initial matter the court must address the issue of venue, raised by the Objector, who alleges that, because the Survivor's Trust has no trustee, the proper venue for this matter is in Contra Costa County where the Trust property is located. Probate Code § 17005 provides:

(a) The proper county for commencement of a proceeding pursuant to this division is either of the following:

(1) In the case of a living trust, the county where the principal place of administration of the trust is located.

(2) In the case of a testamentary trust, either the county where the decedent's estate is administered or where the principal place of administration of the trust is located.

(b) If a living trust has no trustee, the proper county for commencement of a proceeding for appointing a trustee is the county where the trust property, or some portion of the trust property, is located.

(c) Except as otherwise provided in subdivisions (a) and (b), the proper county for commencement of a proceeding pursuant to this division is determined by the rules applicable to civil actions generally.

Objector further requests the court to deny the Petition because there was not service of notice of the hearing on several of the individuals entitled to notice.

**TENTATIVE RULING #2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, NOVEMBER 6, 2023, IN DEPARTMENT NINE.**

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**3. 23PR0203 IN THE MATTER OF MICHAEL F. ESSEX**

**Petition for Instructions**

A Petition was filed on August 24, 2023, making the following representations: Petitioner and Marketa P. Essex (“decedent”) had two children, Daniel Mischa Paschner-Essex (“Mischa”) and Benjamin Disraeli Pachner-Essex (“Korissa”). On June 15, 2020, decedent opened a Wells Fargo High Yield Savings Account (“HYSA”). See Petition, Exhibit A. Petitioner believes the account was funded with community property. Unbeknownst to Petitioner, decedent opened the account as its sole owner and designated the two children as the sole beneficiaries of the account. See Petition, Exhibit B. Subsequently the account continued to be funded with direct deposits from both spouses’ pensions.

Petitioner is aware of decedent’s receipt of \$132,560.28 as separate property from a bequest from her father, and he does not dispute the right of the two children to receive 100 percent of this separate property.

On July 7, 2018, Petitioner and decedent executed the 2018 Essex Family Revocable Trust (“Trust”), see Petition Exhibit C. Following decedent’s death on January 18, 2023, Petitioner has served as sole trustee of the Trust in accordance with its terms. Upon Petitioner’s death, the Trust assets are to be divided between the two children in equal shares. Trust, ¶E. The HYSA, along with all real and personal property of the settlors, was declared to be a Trust asset. See Petition, Exhibits D and E.

On February 28, 2023, Petitioner learned that the entire balance of the HYSA had been withdrawn from the account. See Petition, Exhibit F.

The Petition requests the court to make the following Orders:

1. Determining that the HYSA be characterized as community property;
2. That 100 percent of the HYSA funds (\$223,694.52) be disbursed to Michael D. Essex
3. That HYSA funds (\$223,694.52) be returned to the Trust
4. Finding that Michael D. Essex is the surviving spouse of the Trust.

Proof of service of notice of the Petition was filed on August 29, 2023.

An Objection to the Petition was filed on October 3, 2023, which alleges that the funds in the HYSA were the sales proceeds of a real property that decedent sold after her first marriage ended as well as separate property bequests from her parents. The Objectors request an evidentiary hearing on the issue.

**TENTATIVE RULING #3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, NOVEMBER 6, 2023, IN DEPARTMENT NINE.**

11-06-23  
Dept. 9  
Probate Tentative Rulings

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**4. 23PR0204 IN THE MATTER OF MICHAEL LEE THOMPSON**

**Petition for Letters of Special Administration**

Decedent died intestate on June 13, 2022, survived by his parents and two siblings. Petitioner is decedent's sibling.

The Petition requests Letters of Special Administration with general powers.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on August 23, 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.

Decedent's parents have executed a waiver of their right to be appointed to administer the estate and nominate Petitioner. There is no waiver on file from decedent's other surviving sibling.

The Petition requests that bond be waived, citing bond waivers executed by the adult heirs, but such waivers are not on file with the court.

**TENTATIVE RULING #4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, NOVEMBER 6, 2023, IN DEPARTMENT NINE.**

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**5. 23PR0218 IN THE MATTER OF STEPHEN C. WILNER**

**Petition for Instructions**

Petitioner is successor trustee of the Joseph M. Wilner and Margaret Wilner Revocable Intervivos Trust of June 25, 1985 ("Trust"), as restated on June 16, 1998. The trust was further amended on January 28, 2000 and again on February 15, 2000.

Petitioner requests approval to terminate the Credit Shelter Trust portion of the Trust and the Marital Trust portion of the Trust and distribute those assets to the Survivor's Trust portion of the Trust, so that those assets will be included in the estate of Margaret Wilner. The original Trust, the First Amendment and the Second Amendment are attached to the Petition as Exhibits 1, 2 and 3.

When settlor Joseph M. Wilner passed away the Trust assets were allocated to 1) the Survivor's Trust, 2) the Credit Shelter Trust and 3) the Marital Trust. The Credit Shelter Trust and Marital Trust were irrevocable, but the Survivors Trust was revocable by Margaret Wilner. Margaret Wilner amended the Survivor's Trust four times leading up to the execution of the Fifth Amendment, which is attached to the Petition as Exhibit 4. She then amended it four more times, and the Sixth through Ninth Amendments are also attached to the Petition as the Exhibits 5, 6, 7 and 8, respectively.

Margaret Wilner also executed a Will on January 15, 2012, that stated that the assets in the Credit Shelter Trust and Marital Trust should be distributed in accordance with Paragraph 2.5 of the Survivor's Trust. See Petition, Exhibit 9.

The Petition seeks a court Order instructing Petitioner to terminate the Credit Shelter Trust and the Marital Trust and transfer their assets to the Survivor's Trust effective June 24, 2023, so that those assets will be included in Margaret Wilner's estate for tax purposes.

Petitioner represents that this change will benefit the settlor's estate and the heirs by allowing the Credit Trust and the Marital Trust assets to receive another stepped up basis as of Margaret Wilner's date of death. Petitioner represents that no heirs or beneficiaries will be adversely affected by this Petition, as all of the settlor's heirs are also beneficiaries of the Survivor's Trust in the same proportion, and the beneficiaries' consent to the Petition were filed with the court on September 21, 2023.

Proof of service of notice of the Petition was filed on September 21, 2023.

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

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**6. PP20210061 ISAAC YOON FIRST PARTY SPECIAL NEEDS TRUST**

**Accounting Hearing**

At the hearing held on November 9, 2022, the matter was set for an accounting hearing on November 6, 2023. There is no current account on file with the court.

**TENTATIVE RULING #6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, NOVEMBER 6, 2023, IN DEPARTMENT NINE.**

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**7. 23PR0221 MATTER OF RANDY E. MOREY LIVING TRUST**

**(1) Final Account**

**(2) Removing Trust from Continuing Court Supervision**

Petitioner was appointed conservator of Randy E. Morey on June 10, 2020. The Randy E. Morey Living Trust ("Trust") was established pursuant to a court order dated November 2, 2020, directing Petitioner to transfer all assets of a conservatorship estate and other assets of decedent to the Trust. Randy E. Morey died on July 8, 2023.

Because the Trust was established by court order, it is subject to the continuing supervision of the court pursuant to California Rules of Court, Rule, 7.903.

Proof of service of notice of the hearing was filed with the court on September 26, 2023. Waivers of account and consent to remove trust from continuing court supervision were executed by decedent's three children, the current beneficiaries of the Trust, and are attached to the Petition.

The Petition requests the following findings and orders from the court:

1. Notice of the petition has been given by law;
2. The allegations of the Petition are true;
3. The waiver of account by the beneficiaries is accepted and approved;
4. The Trust is removed from the court's continuing supervision;
5. The surety on the bond posted by the trustee is discharged and released from all liability for all acts subsequent hereto.

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

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**8. PP20190171 MATTER OF THE MONTERO TRUST**

**Petition for Final Distribution**

The Henriette Montero Revocable Trust (“Trust”) was established on February 6, 2008. The Trust and its subsequent amendments are attached to the Petition as Exhibit A. On September 8, 2023, the trustee/Petitioner filed a Petition for Final Distribution.

On November 17, 2021, the court approved a settlement agreement between the parties that modified the terms of the Trust following a hearing. The settlement agreement is attached to the Petition as Exhibit B. Petitioner has been serving as Trustee since August 11, 2022, following the settlor’s death on July 26, 2022, and as such has standing to bring this Petition for Instructions pursuant to Probate Code § 17200. Prior to Petitioner, a professional fiduciary served as trustee.

Proof of service of notice of the hearing was filed with the court on September 15, 2023.

The proposed distribution is set forth in Schedule K of the account, which is attached to the Petition as Exhibit C.

Petitioner requests the court’s approval of the rebalancing of funds between Trust accounts. During the settlor’s period of incapacity, substantial Trust assets had been used by the prior trustee to pay for full-time care and an assisted living facility, and those funds were withdrawn without consideration for maintaining the proportional value of the various accounts, which accounts are designated as specific gifts to the beneficiaries.

The trustee proposes to rebalance the assets between these accounts in order to maintain their proportional values as they existed as of August 2020, when the settlor became incapacitated. The trustee’s goal is to ensure that the beneficiary of each specific distribution receives the correct proportion of funds remaining as of the settlor’s date of death relative to the account values as a whole.

Petitioner requests approval of the trustee’s compensation for fiduciary services and to be reimbursed for reasonable expenses incurred. Petitioner proposes a fee of \$15,000, which is equal to approximately two percent per annum since the settlor’s death. Trustee further requests compensation of \$5,000 to complete the administration of the trust, and if approved, agrees to waive any additional compensation for ordinary services for the duration of the administration of the Trust, while reserving the right to claim additional compensation for future extraordinary services, if any.

Petitioner further seeks approval of reimbursement of costs and litigation expenses, as listed in Schedules I and L to the Summary of Account, attached to the Petition.

11-06-23  
Dept. 9  
Probate Tentative Rulings

The Petition requests the following findings and Orders of the court:

1. Notice of the Petition has been given by law;
2. The allegations of the Petition are true;
3. All acts and transactions of the trustee as set forth in the Petition are ratified, confirmed and approved;
4. The account and report of the trustee for the period between August 11, 2022, and ending May 31, 2023 and attached to the Petition as Exhibit C, is settled, allowed and approved as filed;
5. Trustee's rebalancing of Trust assets is settled, allowed and approved as filed.

**TENTATIVE RULING #8: ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED.**

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**9. 23PR0196 THE MATTER OF THE KATHERINE BENSEN TRUST**

**Petition to Appoint Successor Trustee and to Ascertain Beneficiaries**

Petitioner is one of the intestate heirs of Shirley Ann Gyorgy. This Petition seeks the court's appointment of a successor trustee and designation of a beneficiary in the Katherine Bensen Trust ("Trust") because Shirley Ann Gyorgy, who is the named trustee and sole beneficiary of the Trust has died. In order to administer Shirley Ann Gyorgy's estate for the benefit of her intestate heirs is necessary to conclude the administration of the Trust to pass the Trust assets to the estate of Shirley Ann Gyorgy as the Trust beneficiary.

The Trust was executed on October 5, 2000, but Petitioner does not have a copy and infers its existence and terms because the settlor's assets were titled in the name of the Trust and it was referenced in her San Mateo County estate proceedings. See Petition, Exhibit A. The settlor died on September 20, 2003, and Shirley Ann Gyorgy was served as successor trustee; Petitioner believes that as the settlor's only child she was also the sole beneficiary of the Trust.

Shirley Ann Gyorgy died on May 12, 2017, and she left several accounts titled in her name as trustee of the Trust, which are listed in the Petition.

The intestate heirs of Shirley Ann Gyorgy's estate have executed waivers of notice and nominations of Rebecca Lynn Gyorgy to be appointed as trustee, and Rebecca Lynn Gyorgy has executed a consent to serve as trustee. See Petition, Exhibits C and D.

The Petition requests the following findings and Orders of the court:

1. Appointing Rebecca Lynn Gyorgy as successor trustee of the Trust;
2. Finding that Shirley Ann Gyorgy was the sole beneficiary of the Katherine Bensen Trust.

**TENTATIVE RULING #9: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.**

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**10. 23PR0214 IN THE MATTER OF THE 2006 LOREN M. AZEVDEO AND LINDA W. AZEVEDO FAMILY TRUST**

**Petition for Order Modifying Trust**

The Petition seeks modification of the 2006 Loren M. Azevedo and Linda W. Azevedo Family Trust (attached to the Petition as Exhibit A) for the purpose of improving the tax consequences to the Trust and its beneficiaries, and to make other updates and corrections as described herein. A First Amendment to the Trust was executed on April 6, 2011. See Petition Exhibit B. The settlors had three children who are the beneficiaries of the Trust.

Petitioner is the surviving settlor who has been serving as sole trustee since his wife's death on January 15, 2023. Upon the death of the first settlor, the Trust provided for its assets to be divided into the Survivor's Trust and the Bypass Trust, which was the procedure required by law at the time for the purpose of minimizing estate taxes. Since that time, tax laws have changed in two relevant respects: 1) estate taxes have decreased substantially, and 2) the law now allows for the deceased spouse's tax exemption to remain with the surviving spouse without having to create an irrevocable trust.

While at the time the Trust was created the settlors' estate exceeded their combined exemptions from estate taxes and minimizing tax consequences was a central concern in the creation of the Trust. Now the assets of the estate are well below the exemptions from estate taxes, which has made capital gains a more important consideration than estate taxes.

As currently structured, assets in the Bypass Trust would not receive an adjusted basis for capital gains purposes and would likely be subject to capital gains taxes when sold. The assets in the Survivor's Trust would receive an adjusted basis for capital gains taxes and would likely not be subject to capital gains tax when sold. The Petition specifies substitute language for the Trust in order to accomplish this purpose.

The Petition also requests modification of language regarding successor trustees. Circumstances have changed substantially since the original successor trustee, an accounting firm, was chosen by the settlors when their children were young and they were operating active businesses. Now the children are old enough to manage the task, the businesses have closed and the settlors no longer have a relationship with the originally designated successor trustee. The Petition specifies substitute language for the Trust in order to accomplish this purpose.

The authority for these modifications as cited in the Petition is Probate Code § 15409(a):

On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if, owing to circumstances not

11-06-23  
Dept. 9  
Probate Tentative Rulings

known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust. In this case, if necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.

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

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