

12-18-23
Dept. 9
Probate Tentative Rulings

1. PP20210150 ESTATE OF CAROLYN SCOTT

Review Hearing

See related case: PP20210149 (Tentative Ruling #8)

At the hearing on December 4, 2023, the court set a review hearing on December 18, 2023, regarding a Proposed Order for Probate that was filed *ex parte*. The court directed the Petitioner to provide notice of the December 18, 2023 hearing by December 6, 2023.

TENTATIVE RULING #1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, DECEMBER 18, 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. 22PR0267 ESTATE OF JENKINS

Petition for Final Distribution on Waiver of Account

Letters of Administration were issued on June 5, 2023, granting Petitioner full authority under the Independent Administration of Estates Act.

A Final Inventory and Appraisal was filed on October 20, 2023.

Petitioner is the sole heir of the estate and waives account.

Proof of Service of notice of the hearing on the Petition is not required because Petitioner is the sole heir.

Petitioner is entitled to 100- percent of the distribution of the estate as the sole heir, however, Petitioner has executed an assignment of his interest in the estate to Kevin Woods; the notarized assignment was filed with the court on November 7, 2023.

Petitioner waives any claim to fees as personal representative 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 Petitioner as Administrator be confirmed and approved;
3. Petitioner be authorized to pay statutory attorney fees in the amount of \$6,465.42, plus \$1244.48 for costs advanced to the estate;
4. Distribution of the estate in Petitioner's hands and any other property of the estate not now known or later discovered after payment of costs approved by the court and any remaining taxes and closing expenses, be distributed to the assignee of the beneficiary, Kevin J. Woods, as set forth in the Petition.

TENTATIVE RULING #2: 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.

3. 22PR0302 ESTATE OF BALL

Petition for Final Distribution on Waiver of Account

Letters Testamentary were issued on December 21, 2022, granting Petitioner full authority under the Independent Administration of Estates Act. Decedent was survived by two adult children, one of whom is Petitioner Mark Crockett Ball, and his sister, Rachel Ann Owen. Decedent's spouse predeceased the decedent.

A Final Inventory and Appraisal was filed on July 27, 2023.

Waivers of Account were executed by both of the heirs entitled to distributions under the estate, Petitioner and his sister Rachel Ann Owen, who also confirmed that she had notice of the Petition.

The proposed distribution of the estate was intended to be to the Joe Crockett Ball and Mary Montgomery Ball Revocable Living Trust of 2007 ("Trust") according to the terms of the decedent's Will. According to the Petition, Petitioner and his sister are the only beneficiaries of that trust; however, the Trust has not been filed with the court.

There was only one asset of the decedent, 1318.341 shares of Sempra Energy. Instead of passing that asset to the Trust for distribution to Trust beneficiaries, Petitioner mistakenly distributed it directly to the beneficiaries of the Trust, himself and his sister. Beneficiary Rachel Ann Owen has executed acknowledgement of receipt of 50 percent of the distribution and agrees to return it to Petitioner to be distributed through the Trust if that is what the court requires. Assuming that the Trust provided for such distribution the error is harmless; however, without reference to the terms of the Trust the court is not able to confirm the decedent's intended distribution.

The Petition requests:

1. The administration of the estate be brought to a close;
2. All reported acts and proceedings of Petitioner as Executor be settled, allowed and approved as filed;
3. Petitioner be directed to pay closing costs of the probate administration and any other costs, fees or obligations that may arise;
4. Petitioner be authorized to pay statutory attorney fees in the amount of \$7,225.34, plus \$49.90 for costs advanced to the estate;
5. Distribution of the estate in Petitioner's hands and any other property of the estate not now known or later discovered be distributed made to the beneficiaries as set forth in the Petition.

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6. Receipts having been filed, Petitioner be discharged and released from all liability to be incurred hereafter.

The court requests appearances in order to establish that the distribution of the estate is consistent with the terms of the Trust.

TENTATIVE RULING #3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, DECEMBER 18, 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.

4. PP20210046 ESTATE OF FINNIGAN

Status of Administration

The First and Final Account and Report was allowed, settled, approved and confirmed at the hearing held on December 21, 2022. There have been no additional filings in the matter since that Order was filed and served on January 11, 2023.

TENTATIVE RULING #4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, DECEMBER 18, 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.

5. 23PR0018 ESTATE OF HAINES

Fial Distribution

Letters of Administration were issued on June 6, 2023, granting Petitioner full authority under the Independent Administration of Estates Act.

A Final Inventory and Appraisal was filed on November 2, 2023.

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

Proof of Service of Notice of the hearing on the Petition was filed on November 22, 2023.

The proposed distribution of the estate is to decedent's two adult children in accordance with the terms of decedent's Will, which was lodged with the court on February 3, 2023.

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 Petitioner be confirmed and approved;
3. The Administrator be authorized to pay statutory attorney fees in the amount of \$13,449.35;
4. Approval of distribution of the estate to the persons entitled to it pursuant to the Petition for Final Distribution.

TENTATIVE RULING #5: 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.

6. PP20190077 ESTATE OF OLMSTEAD

Status of Administration

TENTATIVE RULING #6: AN ORDER SETTLING THE FINAL ACCOUNT AND REPORT OF ADMINISTRATOR, ALLOWING STATUTORY AND EXTRAORDINARY COMPENSATION TO ADMINISTRATOR AND ATTORNEYS, DETERMINING HEIRSHIP AND DIRECTING FINAL DISTRIBUTION HAVING BEEN ENTERED BY THE COURT ON AUGUST 21, 2023, THE MATTER IS DROPPED FROM CALENDAR.

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. PP20190222 ESTATE OF BASSETT

Status of Administration

This status hearing has been continued seven times beginning on January 13, 2021.

Letters of Administration were issued on February 20, 2020. The Final Inventory and Appraisal was filed on June 4, 2020. To date, there is still no Petition for Final Distribution in the court's file.

TENTATIVE RULING #7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, DECEMBER 18, 2023, IN DEPARTMENT NINE. A STATUS OF ADMINISTRATION HEARING IS SET AT 8:30 A.M. ON MONDAY, DECEMBER 16, 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. PP20210149 ESTATE OF ROBERT SCOTT

Review Hearing

See related case: PP20210150 (Tentative Ruling #1)

Letters of Special Administration were issued on October 3, 2023.

At the hearing on December 4, 2023, the court set a review hearing on December 18, 2023, regarding a Proposed Order for Probate that was filed *ex parte*. The court directed the Petitioner to provide notice of the December 18, 2023 hearing by December 6, 2023.

TENTATIVE RULING #8: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, DECEMBER 18, 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.

9. **22PR0298 ESTATE OF WILHELM**

Status of Administration

Letters of Administration were issued on December 28, 2022.

TENTATIVE RULING #9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, DECEMBER 18, 2023, IN DEPARTMENT NINE. A STATUS OF ADMINISTRATION HEARING IS SET AT 8:30 A.M. ON MONDAY, DECEMBER 16, 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.

10. 23PR0216 ESTATE OF WESTSMITH

Petition for Letters Testamentary

Decedent died testate on March 30, 2023, survived by two adult children. Petitioner is decedent's daughter. The Petition requests full authority under the Independent Administration of Estates Act.

The Will was lodged with the court on September 8, 2023, and was admitted to probate. Petitioner was named as Executor in the Will. The Will waives bond.

Proof of Service of Notice of the hearing on the Petition was filed on October 23, 2023.

Proof of publication was filed on November 13, 2023.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on November 13, 2023.

TENTATIVE RULING #10: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED. A STATUS OF ADMINISTRATION HEARING IS SET AT 8:30 A.M. ON MONDAY, DECEMBER 16, 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.

11. 23PR0248 ESTATE OF MARTIN

Petition for Letters Testamentary

A Petition for Letters Testamentary was filed on October 6, 2023. On November 13, 2023, Petitioner filed a request for a continuance with the court to allow time to prepare the necessary documentation to support the Petition, which was delayed due to medical issues.

No additional documents have been filed in support of the Petition. Still required are the Duties/Liabilities statement (DE 147/DE 147s), and proof of publication, and proof of service of notice of the hearing on the Petition on all beneficiaries named in the Will, all of which must be filed with the court before the Petition can be approved.

TENTATIVE RULING #11: THE MATTER IS CONTINUED TO 8:35 A.M. ON MONDAY, JANUARY 22, 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.

12. 23PR0210 IN THE MATTER OF DOUGLAS SCOTT

Petition to Confirm Trust Assets

Decedent Daniel Scott inherited a 45 percent interest in the real property described in the Petition (“Property”). See Petition, Exhibit A.

On February 9, 2021, a deed was executed by which decedent Daniel Scott was deeded a 45 percent interest in the Property as an unmarried man, and as tenant in common with Kim Scott, who was deeded the other 55 percent interest in the Property. See Petition, Exhibit B.

The Daniel Scott Trust (“Trust”) was created by decedent (“settlor”) on October 6, 2022, and is attached to the Petition as Exhibit C. Schedule A of the Trust states that “the Settlor hereby intends to transfer, and by way of this agreement does hereby transfer, to the trust to which this schedule is attached all of the Settlor’s assets” See Petition, Exhibit D, emphasis in original. Schedule A specifically references settlor’s interest in the Property as an asset to be transferred to the Trust. Additionally, the settlor’s pour-over will leaves all of the settlor’s assets to the Trust. See Petition, Exhibit E.

Decedent died on August 6, 2023, but did not execute any deed transferring his interest in the Property to the name of the Trust.

The Petition requests that the court issue an Order confirming:

1. That Douglas Scott is the successor trustee of the Trust;
2. That the decedent’s interest in the Property is an asset of the Trust and is subject to the management and control of Douglas Scott as successor trustee.

Probate Code § 850(a)(3) 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. Probate Code § 851 requires the Petitioner to serve notice of the hearing and a copy of the Petition at least 30 days prior to the hearing to each person claiming an interest in or having title to or possession of the property. Probate Code § 851(a)(2). 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. Probate Code § 851(b)(1).

Probate Code § 857 provides that in the event that the court issues such an Order:

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(a) The order is prima facie evidence of the correctness of the proceedings and of the authority of the personal representative or other fiduciary or other person to make the conveyance or transfer.

(b) After entry of an order that the personal representative, other fiduciary, or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order.

According to the guidelines established in the case of Est. of Heggstad, 16 Cal. App. 4th 943, there is sufficient evidence to conclude that the settlor intended to convey his interest in the Property to his Trust:

Section 17 of the Restatement Second of Trusts provides that a trust may be created by “(a) a declaration by the owner of property that he holds it as trustee for another person; or [¶] (b) a transfer inter vivos by the owner of property to another person as trustee for the transferor or for a third person” The comment to clause (a) states: “If the owner of property declares himself trustee of the property, a trust may be created without a transfer of title to the property.” (*Ibid.*)

Est. of Heggstad, (1993) 16 Cal. App. 4th 943, 948.

The settlor transferred his interest both as an express declaration in the Trust document as well as by the terms of his pour-over will. These documents satisfy the requirements of the statute of frauds. As to the successor trustee, the Trust clearly identifies Douglass Scott as successor trustee following the death of the settlor. For these reasons, the substance of the Petition may be granted pursuant to the applicable statutes.

Probate Code § 851(b)(2) requires notice of the hearing on the Petition to be given to “[e]ach person claiming an interest in, or having title to or possession of the property” at least 30 days prior to the hearing. Petitioner filed proof of service of notice of the hearing on November 16, 2023.

The court finds that notice has been given as required by law.

TENTATIVE RULING #12: 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.

13. 23PR0212 ESTATE OF STRICKLER

Petition for Letters Testamentary

Decedent died testate on May 12, 2023, survived by two adult sons. Petitioner is decedent's son. The Petition requests full authority under the Independent Administration of Estates Act.

The Will was lodged with the court on September 5, 2023, as an attachment to the Petition, and is admitted to probate. The Will does not waive bond or appoint an executor. Petitioner filed a waiver of bond but there is no bond waiver on file for his brother Eli Strickler.

The matter was continued following hearing on October 16, 2023, to allow Petitioner an opportunity to file a Duties/Liabilities statement (DE 147/DE 147s) and proof of publication. These documents are not yet on file with the court.

TENTATIVE RULING #13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, DECEMBER 18, 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. 22PR0096 THE MATTER OF MATTHEW LITRELL IRREVOCABLE SPECIAL NEEDS TRUST

Accounting

The venue of this Trust was transferred to El Dorado County from Solano County following a hearing on December 7, 2021.

The Fourth Account and Report was approved by the court at a hearing held on November 2, 2022, and a hearing date was set on October 30, 2023, for a hearing on the Fifth Account and Report. At the hearing on October 30, 2023, no party appeared and there was no Fifth Account and Report on file with the court. The matter was continued to December 18, 2023.

The Trust calls for accountings “in the manner and frequency required by Probate Code § 1060 and 2620, or as ordered by the Court.” Probate Code § 2620(a) provides that accountings are required “not less frequently than biennially, unless otherwise ordered by the court to be more frequent, . . .” Although the court initially set a review hearing for the Fifth Accounting one year after the Fourth Accounting, there is no requirement in the Trust or the Probate Code to generate an annual accounting. Accordingly, the matter is continued for one year for review of the Fifth Account and Report.

TENTATIVE RULING #14: THE MATTER IS CONTINUED TO 8:30 A.M. ON MONDAY, DECEMBER 16, 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. 23PR0001 ESTATE OF COBB

Status Conference

Decedent died intestate on September 13, 2022, survived by four adult daughters. Following the hearing on July 3, 2023, Teresa Cobb, the daughter of decedent's husband, was appointed Administrator of the estate. At that hearing, the court set a further hearing date on October 2, 2023, to hear issues associated with admitting the Will to probate.

On September 25, 2023, counsel for the Executor filed a Declaration dated September 22, 2023, stating:

1. A subpoena has been issued to the law firm that holds the files related to decedent's estate after the firm declined to release the records without the consent of Jacqueline Tucker, who had been named as co-executor in decedent's Will, and that the Administrator will be able to assess the validity of the Will and codicils when those documents have been received.

2. The Administrator is in the process of obtaining estate bank records.

3. In a related civil case brought by the Administrator against decedent Shirley Cobb before her death, the Administrator obtained an *ex parte* order substituting the Administrator in place of the decedent for the purposes of this lawsuit (Case No. 21CV0350), for which there is a case management conference scheduled on December 18, 2023.

4. On September 7, 2023, the Administrator in her individual capacity has filed a creditor claim against the estate.

At a hearing on October 2, 2023, the court ordered this matter to be consolidated with 21CV0350 and set a review hearing on December 18, 2023. The court further ordered the parties to meet and confer.

TENTATIVE RULING #15: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, DECEMBER 18, 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. PP20160118 PARKHURST TRUST

Status Conference

At the hearing held on November 13, 2023, the court set this hearing date on December 18, 2023, to reset the discovery timeline for the trial scheduled on February 27, 2024. The court ordered the parties to meet and confer to identify the issues remaining prior to the hearing.

TENTATIVE RULING #16: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, DECEMBER 18, 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.