

June 17, 2024
Dept. 9
Probate Tentative Rulings

1. PP20200066 CONSERVATORSHIP OF GRISHAM
Trial Setting – Status Conference

TENTATIVE RULING #1:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JUNE 17, 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.

**2. 24PR0108 ESTATE OF ANNE L. MCKENNA
Petition to Determine Succession to Real and Personal Property**

See Related Cases, No. 4 and No. 6

According to the Petition, Decedent died on August 19, 2019, in the state of Washington but owned real property in El Dorado County.

Decedent died intestate, leaving behind personal property only. The Inventory and Appraisal of the property shows a value of \$90,869.60, and was conducted by the Probate Referee as required by Probate Code § 8902.

The interest claimed by Petitioner in each specific piece of personal property is 100%.

Petition Deficiencies

Paragraph 1 is incomplete.

Paragraph 9 is incomplete. No selection was made in 9.a.(5) or (6) regarding whether the decedent is survived by children.

Paragraph 12.a. is selected but the decedent died intestate. (Petition ¶15)

Paragraph 16 indicates that Petitioner is the trustee of a trust designated in decedent's will to receive property. Decedent has no will or trust, nor is Petitioner even named in the Will or Trust attached as exhibits. There is no explanation as to how Petitioner is related or otherwise involved.

Attachment 13 and Attachment 14 are not included.

TENTATIVE RULING #2:

THE HEARING IS CONTINUED TO JULY 22, 2024, AT 8:30 A.M. IN DEPARTMENT NINE TO ALLOW THE PARTY TO CURE THE PETITION DEFICIENCIES.

ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043). 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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3. 22PR0201 ESTATE OF PLANT
Status Conference re: Issues at Trial

See Related Case No. 22PR0202 ESTATE OF UNRUH (#14)

TENTATIVE RULING #3:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JUNE 17, 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.

**4. 24PR0109 ESTATE OF DONALD E. MCKENNA
Petition to Determine Succession to Real and Personal Property**

Decedent died on September 24, 2004, in Placerville, CA. He died testate, survived by his spouse and child.

The gross value of decedent's interest in real and personal property in California, excluding the property described in Probate Code §13050 did not exceed \$166,250. The Inventory and Appraisal filed with the Petition indicates a value of \$47,487.97.

Attachment 11 and the Inventory and Appraisal list the personal property.

The interest claimed by petitioner in each specific piece of personal property is 100%.

Attachment 14 does not contain the names, relationships to decedent, ages, and residence/ mailing addresses, as far as known to or reasonably ascertainable by petitioner, of all persons named or checked in items 1, 9, and 10, all other persons who may be entitled to inherit decedent's property in the absence of a will, and all persons designated in the will to receive any property.

TENTATIVE RULING #4:

THE HEARING IS CONTINUED TO JULY 22, 2024, AT 8:30 A.M. IN DEPARTMENT NINE TO ALLOW THE PARTY TO CURE THE PETITION DEFICIENCIES.

ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043). 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. 24PR0096 ESTATE OF SCHLOSSER
Petition to Determine Succession to Real Property**

Decedent died on November 25, 2023, as a resident of El Dorado County. He died intestate, survived by one sibling, who is the Petitioner.

The gross value of decedent's interest in real and personal property in California, excluding the property described in Probate Code §13050 did not exceed \$184,500. An Inventory and Appraisal is attached as Exhibit 8, showing a value of \$170,000.00.

Probate Code § 13152(e) requires that Form DE300 also be attached to the Petition, *see* Petition paragraph 8(b). That form is included with the Petition.

Attachment 11 contains the legal description of the real property but does not seem to contain the Assessor's Parcel Number (APN).

The interest claimed by each petitioner in each specific piece of real property is 100% interest as a single man.

Attachment 14 contains the names, relationships to decedent, ages, and residence/ mailing addresses, as far as known to or reasonably ascertainable by petitioner, of all persons named or checked in items 1, 9, and 10, all other persons who may be entitled to inherit decedent's property in the absence of a will, and all persons designated in the will to receive any property.

TENTATIVE RULING #5:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED.

ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043). 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. 24PR0107 ESTATE OF ELIZABETH E. MCKENNA
Petition to Determine Succession to Real and Personal Property**

Decedent died on December 15, 2015, in Placerville, CA. She died testate, survived by child(ren).

The gross value of decedent's interest in real and personal property in California, excluding the property described in Probate Code §13050 did not exceed \$166,250.

Attachment 11 and the Inventory and Appraisal list the personal property, with a value of \$69,695.77.

The interest claimed by petitioner in each specific piece of personal property is 100%.

Attachment 14 does not contain the names, relationships to decedent, ages, and residence/ mailing addresses, as far as known to or reasonably ascertainable by petitioner, of all persons named or checked in items 1, 9, and 10, all other persons who may be entitled to inherit decedent's property in the absence of a will, and all persons designated in the will to receive any property.

TENTATIVE RULING #6:

THE HEARING IS CONTINUED TO JULY 22, 2024, AT 8:30 A.M. IN DEPARTMENT NINE TO ALLOW THE PARTY TO CURE THE PETITION DEFICIENCIES.

ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043). 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. PP20200228 ESTATE OF KAMINE
Petition for Preliminary Distribution**

At the May 20, 2024, hearing the Petition was granted in full. Inheritance Cash, who has requested special notice, filed a Petition for Preliminary Distribution as assignee of several heirs' beneficiary interests.

Proceeds from the sale of the real property in the amount of \$231,667.37 were deposited into the trust account. The May 20, 2024, Order granted: \$9,079.45 for attorney fees and costs, \$11,767.50 for extraordinary attorney fees, \$2,715.66 to El Dorado County Tax Collector, and \$2,496.90 to Pakpour Banks LLP for unlawful detainer action. After those payments, the estate will contain \$205,607.86.

Denise Kamine executed two assignments for a total of \$29,800 and Douglas Kamine, through his son/POA Shane Kamine, executed one assignment for \$19,900.

My Inheritance Cash, LLC filed a Petition for Preliminary Distribution to assert the three assigned interests. Neither the personal representative nor any of interested parties have filed an opposition. Probate Code §11604 and §11604.5 apply to this case.

Letters were issued on February 16, 2021. My Inheritance Cash, LLC filed a request for special notice on November 9, 2021.

The Declaration accompanying Douglas's Assignment was executed by the transferee on November 15, 2021. It was served on Shane Kamine, personal representative, through his counsel. The written agreement and the declaration were not filed within 30 days of execution. Probate Code §11604.5(d)(4)

The Declaration accompanying Denise's first assignment was signed November 8, 2021. The agreement was served on personal representative's attorney. The Declaration accompanying Denise's second assignment was signed November 18, 2021. Neither of the written agreements or declarations were filed within 30 days of execution. Probate Code §11604.5(d)(4)

The three written agreements don't contain a statement of all costs or fees. Probate Code §11604.5(e)(4)

TENTATIVE RULING #7:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JUNE 17, 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. 24PR0110 ESTATE OF GODDARD
Petition for Letters Testamentary**

Decedent died testate on November 17, 2023, survived by a partner, one daughter, and three grandchildren from a predeceased child. Petitioner is decedent's daughter.

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

The Executor declines to act and a Declination is attached to the Petition. Petitioner Smith was named as successor Executor in the Will.

The Will was lodged with the court on April 19, 2024, and is admitted to probate.

The Will waives bond.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on April 19, 2024.

Proof of service of notice of the hearing on the Petition was filed on April 26, 2024.

Proof of publication was filed on May 9, 2024.

TENTATIVE RULING #8:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JUNE 16, 2025, IN DEPARTMENT NINE.

ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043). 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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**9. 22PR0112
TRIAL CONFIRMATION**

ESTATE OF WILLIAMS

TENTATIVE RULING #9:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JUNE 17, 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. 24PR0033 ESTATE OF STEWARD
Letters Testamentary**

Petition was conditionally granted at the hearing on April 22, 2024, pending filing of proof of publication.

Proof of Publication was filed on May 10, 2024.

TENTATIVE RULING #10:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JUNE 16, 2025, IN DEPARTMENT NINE.

ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043). 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. 22PR0225 ESTATE OF MORA
Final Distribution

Letters of Administration were issued on October 25, 2022, granting Petitioner full authority under the Independent Administration of Estates Act. A Final Inventory and Appraisal was filed on December 12, 2022.

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

Change in Ownership Statement as required by Revenue and Taxation Code §480(b) was filed on November 7, 2022, with the El Dorado County Assessor.

Per Local Rule 10.07.12, the Petition reports that no federal or estate taxes are payable by the estate, and all California and federal income taxes due and payable by the estate have been paid or are adequately secured.

The proposed distribution of the estate includes 100% distribution to Petitioner.

The Petition requests:

1. The administration of the estate be brought to a close without the requirement of an accounting;
2. The first and final report of petitioner as executor be allowed and approved as filed;
3. All the reported acts and proceedings of petitioner as executor as set forth in this petition be confirmed and approved;
4. Distribution of the estate in petitioner's hands and any other property of the decedent or the estate not now known or discovered that may belong to the estate or in which the decedent or the estate may have any interest be made to the persons entitled to it, as set forth in the petition; and
5. On the filing of receipts petitioner be discharged and released from all liability that may be incurred hereafter.

TENTATIVE RULING #11:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED.

ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043). IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE

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PROVIDED. A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JUNE 16, 2025, IN DEPARTMENT NINE.

**12. PP20180214 ESTATE OF WALLACE
Final Distribution and Account**

On April 13, 2022, the court approved the Final Account and Report, which indicated that there were no assets to distribute to the sole beneficiary of decedent's Will. No ex parte Petition for Final Discharge has been filed.

On August 24, 2022, March 13, 2023, and March 11, 2024, this matter was continued.

TENTATIVE RULING #12:

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JUNE 16, 2025, IN DEPARTMENT NINE.

ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

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. 24PR0103 ESTATE OF GUINN
Spousal Property Petition**

Petitioner is the surviving spouse of decedent, who died intestate January 4, 2024, survived by Petitioner and four adult children. No petition to administer the estate has been filed.

Petitioner alleges that 1/3 of the real property should pass to the surviving spouse pursuant to Probate Code §6401(3) and 2/3 of the real property should pass to the decedent's four children in equal shares pursuant to Probate Code §6402(a). All four of the decedent's children have assigned their interests to the decedent's spouse/petitioner. Assignments are attached to the Petition.

Probate Code § 13500 provides that "when a spouse dies intestate leaving property that passes to the surviving spouse under Section 6401, . . . the property passes to the survivor . . . , and no administration is necessary."

Probate Code 13650 authorizes a surviving spouse to file a petition requesting an order that administration of all or part of an estate is not necessary because all or part of the estate is property passing to the surviving spouse.

The Petition in this case identifies residential real property that is the subject of the Petition.

Notice of the hearing on the Petition was served on decedent's children and proof of service was filed with the court on April 23, 2024.

TENTATIVE RULING #13:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED.

ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043). 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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14. 22PR0202 ESTATE OF UNRUH
Status Conference re: Issues at Trial

See Related Case No. 22PR0201 ESTATE OF PLANT (#3)

TENTATIVE RULING #14:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JUNE 17, 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. 24PR0022
Accounting Hearing**

GLORIA ANNE JONES et al v. JOYCE M. EVERETT

At the March 11, 2024, hearing, the court ordered the accounting to be filed and served on all parties by April 22, 2024 and include all assets going in and out since May 2023. In the Status Report re Accounting filed on April 22, 2024, Respondent Everett and her counsel were still working to complete the accounting and “fully expect the account to be filed and served by May 1, 2024.” (Status Report, ¶7) The accounting has yet to be filed.

However, the parties entered into a Stipulated Settlement Agreement and Release. All parties waive notice.

TENTATIVE RULING #15:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JUNE 17, 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.

16. 22PR0133 SIMAS FAMILY REVOCABLE TRUST
Review Hearing

A Settlement Conference was held on June 12, 2024 in Department 10, at which another Settlement Conference was set on July 31, 2024. The court continues the review hearing until after the next Settlement Conference.

TENTATIVE RULING #16:

MATTER IS CONTINUED TO AUGUST 19, 2024 AT 8:30 A.M. IN DEPARTMENT 9.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

17. PP20190250 THE GRUBER TRUST
Status Conference

Parties to update the court on the status, progress, and/or outcome of mediation, and any other pertinent matters.

TENTATIVE RULING #17:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JUNE 17, 2024, IN DEPARTMENT NINE. PURSUANT TO THE APRIL 30, 2024, ORDER, SUCCESSOR TRUSTEE EVENHUIS IS NOT REQUIRED TO APPEAR FOR THE JUNE 17, 2024 STATUS CONFERENCE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

18. 24PR0089 GOURLAY TRUST
Petition for Order Validating the Trust

Decedent and her husband created the Gourlay Trust in 1993, amended and restated in 2002, first amended in 2012, and second amended later in 2012. Petitioner has been unable to locate the original 1993 trust, nor the 1997 restatement that is mentioned in the 2002 amended and restated trust.

Decedent's husband died in 2020. By its terms, the 2002 Trust was revocable by the surviving settlor.

Decedent then created the Shirley A. Gourlay Trust in 2023 with a new Will. However, decedent refused to have legal help, and had her son-in-law use a software program to create the 2023 estate planning documents. The new trust does not specifically revoke the 2002 Trust. The Schedule A and Assignment of Property attached to the 2023 Trust list real and personal property that decedent intended to transfer into her new trust. The 2023 Will incorrectly leaves the residue of the estate to the 2002 Trust and not the 2023 Trust. Decedent died a little over one month after creating the new documents.

The 2023 Trust nominates co-trustees, one of whom resigned. Petitioner has been acting as sole trustee. Petitioner argues that pursuant to Probate Code §15401, the 2023 Trust acts as a revocation of the 2002 Trust, because it is a writing signed by the settlor and delivered to herself during her lifetime. There is no specific revocation method mentioned in the 2002 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. 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. 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 § 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.

Based on the prior trust documents, the titling of the real property and investment accounts, and the Schedule A attached to the 2023 Trust, it seems to be decedent's intention that her property be included in the trust estate.

The Court has authority to change beneficiary designations on financial accounts pursuant to Probate Code sections 17200, subdivisions (a)(4), 5302, subdivision (c)(2), and 17206. Probate Code section 17200, subdivision (a)(4) states: 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 ... (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. In the instant case, the trustee has petitioned this Court to change a beneficiary designation on financial accounts, including an IRA, from the 2002 Gourlay Trust to the 2023 Shirley Gourlay Trust. This change in beneficiary designation to the 2023 Trust would result in the property being distributed to the beneficiaries of the 2023 Trust, which reflects the settlor's most recent intent to distribute her trust assets according to the terms of the 2023 Trust.

Proof of service of notice of the hearing on the Petition was mailed on April 10, 2024, and was filed on April 10, 2024.

Petitioner requests that the Court issue an order:

- 1) That the Shirley A. Gourlay Trust u/d/t dated May 9, 2023, is the operative trust instrument;
- 2) That the 2002 Gourlay Trust is revoked and therefore invalid;
- 3) Transferring the real property commonly known as 470 Walnut Avenue, Walnut Creek, CA, APN 142-312-001-1, and described as Lot 6, Map of Subdivision 4366, filed May 16, 1973, Map Book 157, Page 19, Contra Costa County records, into the Shirley A. Gourlay Trust u/d/t dated May 9, 2023; and,
- 4) Transferring the following accounts into the Shirley A. Gourlay Trust u/d/t dated May 9, 2023, by way of change of beneficiary designations:
 - a. Charles Schwab Account No. 5634-2566;
 - b. Vanguard Fund Account No. 0536-09918174993; and,

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- c. Vanguard Individual Retirement Account No. 72317263.

TENTATIVE RULING #18:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED.

ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043). IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

**19. 23PR0284 THE HERBERT R. AND JEANETTE M. BISHOP TRUST
Removal of Trustee, Objection, etc.**

The April 15, 2024, hearing was continued to June 17, 2024. Both parties filed briefs.

On January 22, 2024, Petitioner filed her Petition for Removal of Trustee, to Compel Accounting, and for Damages for Breach of Duty arguing that Respondents owed a duty to account to Petitioner. On April 15, 2024, the Court heard the matter and requested that Petitioner provide a Memorandum of Points and authorities to address two issues: 1) Whether the duty to account was not required due to the applicable statute of limitations period; and 2) Whether Respondents had a duty to account for a period before Respondents became Trustees.

In regard to the first issue, Petitioner cites Probate Code §16460(a)(l), which provides a three-year statute of limitation for filing an action for breach of trust if a beneficiary has received an accounting or other written report in writing. No accounting was ever submitted to or received by Petitioner. When she received Trustee Notification to Heirs at Law, Petitioner requested the estate planning documents. Upon receipt of the documents, she first learned that she was a beneficiary. Despite written requests for an accounting, one has not been provided to Petitioner, so the instant Petition falls within the statute of limitations.

Respondents reply by citing Article XX, Paragraph B of the Trust, which states in part: "[a]ccounting shall be made by delivering a written account to each beneficiary entitled to current income distribution, or if there are no current income beneficiaries, to each beneficiary [sic] entitled to current income distribution from income or principal in the Trustees' discretion, and to each remainder interest." They argue at no point can Petitioner be considered a "beneficiary entitled to current income distribution" nor a "beneficiary entitled to current distribution from income or principal" because her beneficial interest in the Trust is derived solely from the Exemption Trust which never held any assets.

Respondents reply that Probate Code §16460 doesn't apply because Petitioner is not a beneficiary. They state that the Trustee Notification stated Petitioner was an heir and not a beneficiary but that she "still complains 'until the operative documents were served...she had no knowledge she was a beneficiary of the Trust.'" Respondents inadvertently admit Petitioner had no knowledge she was named as a beneficiary until she received the estate planning documents, as alleged in Petitioner's brief.

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Pursuant to Probate Code §24(c) and the *Estate of Girdalin* (2012) 55 Cal.4th 1058, Petitioner has standing to demand an accounting. Since Petitioner has never received an accounting, she is within the three-year statute of limitation.

In regard to the second issue, Petitioner argues that while Probate Code §16069 provides that a successor Trustee need not account to a beneficiary for a period during which the Trust was revocable, this provision does not apply to the Exemption Trust. The Exemption Trust became irrevocable upon Herbert Bishop's death November 5, 2007. Because the Exemption Trust was irrevocable as of that date, an accounting of the Exemption Trust's assets is required. Assets belonging to Herbert Bishop passed through the 1995 Trust, the Survivor's Trust, and then ultimately into the Family Trust, of which Respondents are designated as Trustees. In order to accurately track Respondents' contentions that the Exemption Trust contained no assets, an accounting of the subsequent trusts should also be required.

Generally, a successor Trustee need not provide an accounting to beneficiaries for a period in which a Settlor is Trustee and the trust is revocable. *Babbitt v. Superior Court* (2016) 246 Cal.App.4th 1135, 1146. However, the holding of *Babbitt* was conditioned upon the beneficiary's failure to allege incapacitation or undue influence during that period. *Id.* In Petitioner's instant Petition, Petitioner has alleged that Jeanette Bishop was subject to undue influence by Respondents. (Petition pg. 4, ¶¶ 18-28). Additionally, Jeanette Bishop did not hold any power to revoke the Family Trust as the Family Trust provided at its execution that the only parties with power to revoke the Trust were Respondents.

In *Estate of Girdalin* (2012) 55 Cal.4th 1058, 1076, the California Supreme Court held that after a settlor's death, the beneficiaries have standing to assert a breach of the fiduciary duty a trustee owed to the settlor to the extent that breach harmed the beneficiaries. As with the trustee in *Girdalin*, Respondents insist that a breach of duty (including that of providing an accounting) cannot be supported while the Settlor of the trust is still living. However, because Respondents were the trustees of the Family Trust, and the only parties with the authority to revoke the Family Trust, they owe a duty to account for the Family Trust. Jeanette Bishop had been diagnosed with moderate to severe Alzheimer's disease on May 9, 2016, over two years before the creation of both the Survivor's Trust and the Family Trust. (Declaration of Traelyn Lewis, exhibit A) If in fact Jeanette Bishop was unable to manage her own affairs and provide for her own care, she would have been unable to serve as Trustee of the Bishop Trust from May 9, 2016, until her death on November 3, 2022. As Respondents exerted control over Jeanette Bishop after May 9, 2016, Respondents were acting as *de facto* Trustees with respect to the Bishop Trust since the date of Jeanette's incapacity. In accordance with *Giradlin*, and due to the filtering of assets from the 1995 Trust through various other trusts allegedly created after Jeanette Bishop's incapacity, Respondents should be held to account to Petitioner for the period from Jeanette Bishop's incapacity on May 9, 2016, to the present with respect to all three trusts.

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Respondents reply that Article IV of the Trust provides the test for incapacity and the settlor is deemed incapacitated in the Trustee's discretion or in writing by two licensed physicians. They cite *Anderson v. Hunt* (2011) 196 Cal.App. 4th 722, 730 in stating that decedent, even with diagnosed Alzheimer's, had capacity to make trust amendments that are analogous to wills or codicils. However, in *Anderson*, the settlor had a stroke, not Alzheimer's. What was happening in the instant case is more complicated than merely shifting percentages amongst the beneficiaries. Probate Code §15800(c) provides that incompetency may be established by the method specified in the trust instrument or by judicial determination of incompetency. The court grants the request for an accounting and defers the other issues. The court orders that the accounting be completed by September 13, 2024 and sets a hearing regarding status and to address the remaining issues as appropriate on October 14, 2024 at 8:30 a.m. in Department 9.

TENTATIVE RULING #19: THE COURT GRANTS THE REQUEST FOR AN ACCOUNTING AND ORDERS THAT THE ACCOUNTING BE COMPLETED BY SEPTEMBER 13, 2024 AND SETS A HEARING REGARDING STATUS AND TO ADDRESS THE REMAINING ISSUES AS APPROPRIATE ON OCTOBER 14, 2024 AT 8:30 A.M. IN DEPARTMENT 9.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED. A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JUNE 16, 2025, IN DEPARTMENT NINE.

20. 24PR0100 JOHNSON REVOCABLE TRUST
Confirm Validity of Trust, Confirm Trustee, Confirm Assets

Decedent created a living trust on June 11, 2008 and died on April 18, 2023. Decedent is survived by four adult children, who are the beneficiaries of the trust.

Petitioner became the duly appointed Successor Trustee at that time and has continued to serve as Successor Trustee.

During her lifetime, decedent purchased real property, which she owned at the time of her death. This property is the subject of the Petition. While administering the trust, Petitioner was informed that the real property was never transferred into the trust. However, the property is referenced on the Schedule of Trust Assets, which is attached to the Petition.

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

(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

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of the order as if the property had been conveyed or transferred in accordance with the terms of the order.

* * *

Proof of service of notice of the hearing on the Petition on date by mail on April 19, 2024, was filed on April 24, 2024.

TENTATIVE RULING #20:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED.

ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043). IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED. A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JUNE 16, 2025, IN DEPARTMENT NINE.