

August 5, 2024
Dept. 9
Probate Tentative Rulings

1.	23PR0111	ESTATE OF LITTLE
Status of Administration		

An Order for Final Distribution was filed on May 20, 2024. This case is set for a status of administration hearing on Monday, May 19, 2025, at 8:30 A.M. in Department Nine.

TENTATIVE RULING #1:

THIS HEARING IS DROPPED FROM THE CALENDAR.

AN ORDER FOR FINAL DISTRIBUTION HAVING BEEN ENTERED BY THE COURT ON MAY 20, 2024, THE MATTER IS CONTINUED TO 8:30 A.M. ON MONDAY, MAY 19, 2025, IN DEPARTMENT NINE, BY WHICH TIME THE COURT EXPECTS RECEIPTS AND AN EX PARTE PETITION FOR FINAL DISCHARGE (JUDICIAL COUNCIL FORM DE-295) TO BE FILED WITH THE COURT.

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.	23PR0290	ESTATE OF MATTHEWS
Petition for Final Distribution		

Letters of Administration were issued on January 22, 2024, granting Petitioner full authority under the Independent Administration of Estates Act.

A Final Inventory and Appraisal was filed on June 7, 2024. The Change of Ownership Statement was filed with the El Dorado County Assessor's Office on February 26, 2024. The Petition complies with the requirements of Local Rule 10.07.12 regarding income taxes and estate taxes.

Waivers of Account were executed by all the heirs entitled to distributions under the estate. The proposed distribution of the estate includes equal distribution amongst decedent's two adult daughters.

Proof of Service of Notice of the hearing on the Petition was filed on July 16, 2024. No one has filed a request for special notice in this proceeding.

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 on Waiver of Account filed with the Petition be settled, allowed and approved;
3. All acts and proceedings of the Administrator be confirmed and approved;
4. The Administrator be authorized to pay statutory attorney fees in the amount of \$12,650.00;
5. The Administrator be authorized to pay herself \$12,650.00 in statutory compensation;
6. Approval of distribution of the estate to the persons entitled to it pursuant to the Petition for Final Distribution;
7. Distribution of the estate in Petitioner's hands and any other property of the estate not now known or later discovered be distributed to the beneficiaries as set forth in the Petition.

TENTATIVE RULING #2:

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).

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, AUGUST 4, 2025, 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.

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3.	23PR0112	ESTATE OF MACKAY
Status of Administration		

Letters of Administration with full authority under the Independent Administration of Estates Act, were issued on August 7, 2023. Bond was set at \$186,000.00.

An Inventory and Appraisal was filed on February 26, 2024, and May 31, 2024. A change of ownership statement was filed with the county recorder or assessor in each county where the decedent owned real property at the time of death, as provided in section 480 of the California Revenue and Taxation Code.

TENTATIVE RULING #3:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, AUGUST 5, 2024, IN DEPARTMENT NINE.

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, AUGUST 4, 2025, 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.

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4.	22PR0081	ESTATE OF TAYLOR
Status of Administration		

Letters of Administration were issued on May 18, 2022.

An Inventory and Appraisal was filed on March 23, 2022, but does not indicate whether it is the partial or final version.

TENTATIVE RULING #4:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, AUGUST 5, 2024, IN DEPARTMENT NINE.

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, AUGUST 4, 2025, 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.

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5.	22PR0040	ESTATE OF CRAGUN
Status of Administration		

An Order for Final Discharge was entered on August 14, 2023.

TENTATIVE RULING #5:

AN ORDER FOR FINAL DISCHARGE HAVING BEEN ENTERED BY THE COURT ON AUGUST 14, 2023, THE MATTER IS DROPPED FROM CALENDAR.

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6.	24PR0121	ESTATE OF JONES
Letters Testamentary		

Decedent died testate on April 5, 2024, survived by three 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 May 2, 2024, and is admitted to probate. Petitioner was named as Executors in the Will. The Will waives bond and additionally, waivers of bond have been filed with the court by the beneficiaries.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on July 8, 2024. Proof of publication was filed on July 26, 2024.

There is no proof of service of notice of the Petition on file with the court for this hearing date, as required by Probate Code § 8110. The notice on file shows a hearing date of July 8, 2024, not August 5, 2024. Probate Code §8110 requires that at least 15 days before the hearing of a petition for administration of decedent's estate, the petitioner must deliver notice of the hearing to each heir of the decedent.

Prior to the next hearing, a Notice of Petition (DE-121) showing the proper hearing date was served on all heirs, needs to be filed with the Court.

TENTATIVE RULING #6:

HEARING IS CONTINUED TO 8:30 A.M. MONDAY, AUGUST 19, 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.

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7.	23PR0119	ESTATE OF SKINNER
Status of Administration		

A Petition for Final Distribution was filed on July 22, 2024, and is set to be heard on September 9, 2024.

TENTATIVE RULING #7:

THIS HEARING IS DROPPED FROM CALENDAR. THE NEXT HEARING WILL BE 8:30 A.M. ON MONDAY, SEPTEMBER 9, 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.

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8.	24PR0134	ESTATE OF JOHNSON
Letters of Administration		

Proof of Publication was filed on July 22, 2024. Notice of Petition was filed on July 11, 2024. All requirements for the issuance of Letters have now been met.

TENTATIVE RULING #8:

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).

A STATUS OF ADMINISTRATION HEARING WAS ALREADY SET FOR 8:30 A.M. ON MONDAY, JULY 7, 2025, 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.

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9.	24PR0119	ESTATE OF PEVC
Letters of Administration		

The DE-147S was filed on July 2, 2024. Notice of Petition was filed July 2, 2024. All requirements for the issuance of Letters have now been met.

TENTATIVE RULING #9:

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).

A STATUS OF ADMINISTRATION HEARING IS ALREADY SET FOR 8:30 A.M. ON MONDAY, JULY 7, 2025, 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.	24PR0168	GILL REVOCABLE TRUST
Order to Confirm Ownership of Real Property & Confirming Trust		

Decedent first established his Trust on May 9, 2012. He amended it on October 28, 2012, and August 31, 2022. Decedent died on February 27, 2024, survived by three adult children. The sole beneficiary of the Trust is one of the adult daughters. The contingent beneficiary is the Trustee.

The real property at issue was transferred into the Trust on May 9, 2012. The real property is also listed as an asset on the Schedule A of the Trust. However, in January 2017, Decedent refinanced the property, which required transferring the real property out of the Trust and to Decedent as an individual. After refinancing, the Trustor failed to transfer the real property back into the Trust.

The final Amendment occurred on August 31, 2022, which was after the refinancing. The terms of that Amendment, include a description of the real property as a Trust asset, showing Decedent's intent that the real property remain a Trust asset.

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

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Notice of the hearing and a copy of the Petition must be mailed at least 30 days prior to the hearing, to each person claiming an interest in or having title to or possession of the property, as well as any heir or devisee whose interest may be affected by the Petition. There is no Notice in the Court's file.

Under Evidence Code § 1521, the contents of a writing may be proved by otherwise admissible secondary evidence, as long as there is no dispute concerning material terms of the writing; justice does not require exclusion; or the admission of the secondary evidence would be unfair. *Penny v. Wilson* (2004) 123 Cal.App.4th 596. The Trustee has only been able to locate copies and not the originals of the Trust or the First Amendment. However, he has located the original of the Second Amendment. The drafting attorney does not have the original documents. The Court cannot grant the relief requested without a properly served Notice on file. If this is merely an oversight and counsel has a valid Notice to present, it can be brought to the hearing, otherwise the matter will be continued.

TENTATIVE RULING #10:

APPEARANCES REQUIRED AT 8:30 A.M. ON MONDAY, AUGUST 5, 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.	24PR0163	MATTER OF BERTI
Modification of Trust		

The Trustors established their Trust on February 26, 1993. One of the Trustors died on January 16, 2019. She is survived by her husband and four adult children.

The Trust provided that upon the death of the first Trustor, the estate was to be divided into the Family Trust and the Survivor's Trust. When the Trust was created, the exemption amount was \$600,000.00, but at the time of the first death in 2019, the exemption amount was \$11,400,000. The purpose of the division was to reduce or eliminate estate taxes and to provide for the surviving spouse.

Probate Code section 17200 provides in pertinent part:

- (a) Except as otherwise 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.
- (b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:
 - (1) Determining questions of construction of a trust instrument
 - (8) Granting powers to the Trustee
 - (13) Approving or directing the modification or ° termination of the trust.

Based on the intent of the Trustors, the purpose of the Trust, and the change in circumstances, the Court finds it reasonable that all of the Trust assets be confirmed to the Bertti Family Trust Survivor's Trust, and that no bond be required at this time.

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).

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12.	22PR0116	EARL REVOCABLE TRUST
Status Hearing		

Dismissal with Prejudice was entered on July 29, 2024.

TENTATIVE RULING #12:

MATTER IS DROPPED FROM CALENDAR.

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13.	23PR0176	VEEN FAMILY TRUST
Petition for Instructions		

Petitioner is a beneficiary of the Vender Veen Family Revocable Living Trust (“Trust”), which was established by the settlor, Dean Albert Vander Veen on July 20, 2006. The Petition alleges that the Trust was funded with the settlor’s separate property, assets that were gifted to the settlor by his mother. The Respondent represents that the Trust was also funded by Respondent’s inheritance and employment income, and that the parties agreed to hold all of the Trust assets as community property. Settlor passed away on November 3, 2006, whereupon his spouse, Respondent, became sole trustee and the Trust was split into a family and survivor’s trust, pursuant to the terms of the Trust.

The Petition states that accountings filed over the years show an annual payment of \$5,000 to the trustee, in addition to a \$120,000 payment purportedly to reimburse the trustee for expenses advanced to the Trust, as described in the May 24, 2022, account. In addition, the Petition states that the trustee transferred a real property to herself to repay funds she claims to have loaned to the Trust. After transferring the real property to herself, the Petition alleges that the trustee personally profited from that property by logging it. Respondent represents that the cost of tree removal through salvage logging is a necessary expense to clear the burned property, not a profitable enterprise.

Respondent states that informal accountings were initially provided, until she received legal advice to prepare more formal accountings and did so beginning in 2014. Respondent argues that Probate Code § 16460¹ bars any breach of trust claims by a beneficiary after three

¹ Probate Code § 16460(a) provides:

(a) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise:

(1) If a beneficiary has received an interim or final account in writing, or other written report, that adequately discloses the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within three years after receipt of the account or report. An account or report adequately discloses existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into the existence of the claim.

(2) If an interim or final account in writing or other written report does not adequately disclose the existence of a claim against the trustee for breach of trust or if a beneficiary does not receive any written account or report, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within three years after the beneficiary discovered, or reasonably should have discovered, the subject of the claim.

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years from the date that the accounting or report was received that provided notice of potential claims. To the extent that past accountings are still subject to challenge by beneficiaries, Respondent further states that she cannot respond to the allegations in the Petition without more specifics.

The Petition requests an accounting for claims of reimbursement for Trust expenses and alleges that the accountings that have been provided are inadequate because they do not sufficiently justify these reimbursements. For example, the Petition indicates there are expenses for well drilling, although the Trust's real property does not have a well, but real property owned separately by the trustee does have a well. The Petition seeks explanation of work that the Trust paid for that was done by a friend of the trustee, Ted Hamel.

A residence on the real property was destroyed in the Caldor fire, and the Trust received insurance proceeds in the amount of \$253,072.70, which was split between the family trust and the survivor's trust. The trustee distributed \$50,000 of these insurance proceeds to herself as compensation for her personal effects that were burned in the fire. Petitioner seeks confirmation that none of this personal property constituted trust assets. Respondent states that all furnishings and personal belongings that were in the residence that burned belonged to Respondent and was assigned to the survivor's trust by a written assignment executed on December 31, 2008, 12 years before the Caldor Fire insurance settlement was received. See Opposition, Exhibit B.

While the Trust authorizes distributions to the trustee as surviving spouse and to settlor's child and grandchildren, the Petition alleges that most of those distributions were made to the trustee to the point of rendering the Trust insolvent. Respondent counters that such distributions were discretionary within the trustee's authority, not mandatory, that the settlors never intended to support the beneficiaries through payments from the Trust, that Petitioner was married and employed when Dean Vander Veen died and did not require support from the Trust.

The Petition requests:

1. That the trustee be instructed to redress her actions with respect to Trust assets and distributions;
2. For an order of surcharge for damages to the Trust and its beneficiaries pursuant to Probate Code § 16440;
3. For a constructive trust in favor of the Trust on any property, including the real property transferred from the Trust to the trustee in her individual capacity.

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Respondent requests an Order:

1. denying Petitioner's objections to past accountings;
2. denying to the imposition of a constructive trust,
3. accepting the interim and final accountings of the trustee
4. for attorney's fees and costs.

The parties appeared at the hearing held on October 30, 2023, and following arguments, the matter was continued. Petitioner's Motion to Compel deadline was May 29, 2024. No such Motion has been filed with the Court.

TENTATIVE RULING #13:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, AUGUST 5, 2024, IN DEPARTMENT NINE.

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14.	23PR0113	ESTATE OF KING
Status of Administration		

Letters of Administration with limited authority were issued on September 5, 2023.

An Inventory and Appraisal was filed on January 30, 2024.

TENTATIVE RULING #14:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, AUGUST 5, 2024, IN DEPARTMENT NINE.

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, AUGUST 4, 2025, IN DEPARTMENT NINE.

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