

August 19, 2024
Dept. 9
Probate Tentative Rulings

1.	22PR0309	WEBSTER v. WEBSTER
OSC Hearing		

TENTATIVE RULING #1:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON 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.

2.	PP20200103	ESTATE OF SANCHEZ
Petition		

Petition for Final Distribution

Letters of Administration were issued on September 23, 2020, granting Petitioner and co-executors Woodring and Covey full authority under the Independent Administration of Estates Act.

A partial Inventory and Appraisal was filed on March 31, 2021. The co-executors agree this represents all assets of the estate and should be considered the final Inventory and Appraisal.

Co-Executors are both beneficiaries and have waived the requirement of an accounting. However, there is no waiver of accounting from the third beneficiary, Susan Carol Sanchez, on file with the court.

Proof of Service of Notice of the hearing on the Petition was filed on March 29, 2024.

The proposed distribution of the estate includes \$500 to Susan Carol Sanchez, 50% to Sandra Woodring, and 50% to Sharon Covey.

The Petition requests:

1. The administration of the estate be brought to a close without an accounting;
2. The First and Final Report of Petitioner as Co-Executor be settled, allowed and approved;
3. That all reported acts and proceedings of Petitioner as Co-Executor be confirmed and approved;
4. That Petitioner be authorized to pay attorney Hoffman attorney's fees in the amount of \$4,051.08 as the statutory compensation for ordinary services rendered in the administration of the estate, as well as \$535.00 as reimbursement for costs advanced to the estate;
5. That Petitioner be authorized to pay the Buchalter law firm attorney's fees in the amount of \$4,051.08 as the statutory compensation for ordinary services rendered in the administration of the estate, as well as \$2,005.98 as reimbursement for costs advanced to the estate;
6. That the agreement between the Co-Executors set forth on Exhibit F is approved and Sandra Woodring is authorized and directed to distribute the items set forth on Exhibit F to Sharon Covey;

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7. That distribution of the estate in Petitioner's hands and any other property of the decedent or the estate not now known or discovered be made to the person entitled to it, as set forth in the Petition;
8. Upon filing of receipts that Petitioner and Ms. Woodring be discharged and released from all liability that may be incurred hereafter.

Hoffman/Woodring Response to Final Petition

Woodring requests reimbursement of \$1,044.87 for costs advanced on behalf of the estate. There is no objection.

Extraordinary Fee Requests

The law with respect to the allowance of fees claimed for extraordinary services rendered in probate proceedings is well settled. Additional "extraordinary" compensation may be authorized for exceptional (nonroutine) services to the extent the court deems such compensation "just and reasonable." Unlike statutory compensation, there is no absolute right to extraordinary compensation. Prob.C. §§ 10801(a), 10811(a); *Estate of Hilton* (1996) 44 Cal.App.4th 890, 895. "Extraordinary services" by personal representatives of estate or their attorneys, which are subject to additional compensation beyond ordinary compensation, include services in connection with such matters as litigation with third parties, federal estate tax matters, and sales of property. *Id.*

The grant or denial of such fees is addressed to the sound discretion of the probate court. Prob.Code, § 10811, subd.(a); *Estate of Trynin* (1989) 49 Cal.3d 868, 874; *Estate of Hilton* (1996) 44 Cal.App.4th 890, 914; *Estate of Downing* (1982) 134 Cal.App.3d 256, 266–267; see also 12 Witkin, Summary of Cal **466 Law (9th ed. 1990). "If, under all the relevant circumstances, the amount awarded as ordinary compensation is fair and reasonable for all the attorney services, the court may disallow a request for extraordinary compensation even though some extraordinary services have been performed." *Estate of Trynin, supra*, 49 Cal.3d at p. 874, 264.

The probate court retains discretion to decide not only *whether* costs should be paid, but also, if they are awarded, who will pay and who recover them. Prob.Code, § 1002. *Hollaway v. Edwards* (1998) 68 Cal.App.4th 94, 99. *Hollaway* involved attorney fees related to defense of claims brought by a co-trustee that the other co-trustee wrongfully obtained or withheld property; the court held that while the defense against those allegations may have benefitted her personally, they also benefitted the trust by eliminating concerns about whether she could administer the trust properly. *Id.* Litigation expenses in defending adverse claims, including reasonable attorney fees, are therefore properly reimbursed as "necessary" expenses of administration ... so long as the expenditures were necessary and made in good faith. *Estate of*

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Turino (1970) 8 CA3d 642, 647-648, 87 CR 581, 585; *Estate of Hart* (1959) 51 C2d 819, 826-827, 337 P2d 73, 78.

The Court recognizes that the statutory fee is divided in this case, but the estate consisted completely of personal property, and while the fee is divided, there were certain tasks completed by one attorney, that the other attorney then did not need to complete.

The Buchalter law firm Counsel for co-executor Covey has submitted a Petition for Approval of Extraordinary Fees, which requests payment of extraordinary fees in the amount of \$66,028.93. The categories include: pre-appointment services, general administration, marshalling assets, creditor claims, and litigation/settlement. The \$2,862.50 for pre-appointment services is denied. The \$23,795.00 for general administration is denied. The \$5,767.50 for marshalling assets is denied. The \$3,650.00 for creditor claims is denied. The Court considers this work part of the ordinary administration of an estate, which is covered by the statutory scheme.

The total claimed for litigation/settlement is \$34,005.00 for 120.30 hours of work. However, some of the charges for litigation/settlement include internal discussions between members of Buchalter (i.e.: 8/27/2021 GRL "...exchange correspondences with BLP re review..."; 4/7/2022 GRL "REVIEW...CORRESPONDENCES EXCHANGED BETWEEN BLP AND JM...RESPOND TO JM'S CORRESPONDENCE RE REMOTE APPEARANCE...; 7/13/2022 GRL "...RESPOND TO BLP..."; 11/28/2022, GRL "COORDINATE WEDNESDAY'S HEARING WITH BLP" and same day BLP "ATTORNEY CONFERENCE WITH GRL...") The Court does not find these to be reasonable and necessary billing entries. Therefore, the total claimed for litigation/settlement is reduced by half and the Court grants Buchalter a total of \$17,002.50 for extraordinary fees payable by Covey's share of the estate.

Hoffman requests \$16,576.45 in extraordinary fees, broken down into three categories – decedent's personal property dispute, dispute regarding claim regarding missing funds, defense against Petition to Enforce Settlement Agreement. In the Court's review of the billing, there are numerous entries that were not billed for (shown by NB and amount 0.00) and the bulk of the work was completed by Hoffman, which indicates that there was not double billing or internal discussions being charged. Therefore, the Court grants \$16,576.45 in extraordinary fees to Hoffman payable by Woodring's share of the estate.

TENTATIVE RULING #2:

- 1. FIRST AND FINAL REPORT OF CO-EXECUTOR ON WAIVER OF ACCOUNT AND PETITION FOR ITS SETTLEMENT; ALLOWANCE OF STATUTORY COMPENSATION TO ATTORNEYS; WAIVER OF STATUTORY COMPENSATION TO CO-EXECUTORS; PETITION FOR APPROVAL OF AGREEMENT RE PERSONAL PROPERTY; AND PETITION FOR FINAL DISTRIBUTION ("PETITION FOR FINAL DISTRIBUTION") IS GRANTED.**

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- a. **THE REQUEST BY MS. WOODRING FOR REIMBURSEMENT OF \$1,044.87 FOR COSTS ADVANCED ON BEHALF OF THE ESTATE IS GRANTED.**
2. **BUCHALTER IS AWARDED \$17,002.50 FOR EXTRAORDINARY ATTORNEY FEES, PAYABLE OUT OF COVEY'S SHARE OF THE ESTATE.**
3. **HOFFMAN IS AWARDED \$16,576.45 FOR EXTRAORDINARY ATTORNEY FEES, PAYABLE OUT OF WOODRING'S SHARE OF THE ESTATE.**

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 18, 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.	24PR0132	ESTATE OF CONINE
Letters		

Decedent died testate on February 27, 2024, survived by two adult siblings. He was never married and has no children. Petitioner is decedent's sister. The Petition requests full authority under the Independent Administration of Estates Act.

The Will was lodged with the court on May 13, 2024, and is admitted to probate. Petitioner was named as Executors in the Will. The Will waives bond.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on May 13, 2024.

Proof of service of notice of the hearing on the Petition was filed on July 17, 2024.

Proof of publication filed on August 6, 2024.

TENTATIVE RULING #3:

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 18, 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.	24PR0111	ESTATE OF COPE
Letters		

Decedent died testate on October 27, 2023, survived by his wife and three adult daughters. Petitioner is decedent's wife. The Petition requests full authority under the Independent Administration of Estates Act. Petitioner was named as Executor in the Will.

The Will has been lodged with the court (24WL0030) and the Will waives bond.

A Duties/Liabilities Statement (DE 147) was filed on April 19, 2024, and the DE-147S was filed on June 24, 2024. Proof of publication was filed on May 10, 2024.

On June 24, 2024, Letters issued with an expiration date on August 19, 2024. This hearing is to determine bond.

TENTATIVE RULING #4:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, AUGUST 19, 2024, IN DEPARTMENT NINE.

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, AUGUST 18, 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.	23PR0323	ESTATE OF MASHBURN
Petition		

The case was heard on May 13, 2024, at which time the parties requested a hearing for post-mediation to discuss setting the matter for trial.

TENTATIVE RULING #5:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON 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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6.	22PR0097	ESTATE OF BONSER
Petition for Final Distribution		

Letters of Administration were issued on November 2, 2022, granting Petitioner full authority under the Independent Administration of Estates Act.

Two partial Inventory and Appraisals were filed on May 1, 2023, and August 11, 2023. A Final Inventory and Appraisal was filed on September 29, 2023. Accounting was filed with this Petition and no objections have been received.

Proof of Service of Notice of the hearing on the Petition was filed on July 24, 2024. No one has filed a request for special notice in this proceeding.

The proposed distribution of the estate includes 50% to the surviving spouse and 8.33% to each of decedent's six adult children.

The Petition complies with Local Rule 10.07.12.

The Petition requests:

1. The First and Final Account filed with the Petition be settled, allowed and approved;
2. All acts, transactions, sales, and proceedings of the personal representative be ratified, confirmed and approved;
3. Petitioner be authorized to pay (1) her attorney \$3,229.62 for costs advanced to the estate; (2) herself \$13,660.63 for costs advanced to the estate; (3) Patricia Sanford \$981.48; (4) The Quentin Bonser, MD and Loellen R. Bonser Revocable Living Trust the amount of \$6,064.89; and (5) \$1,375.00 to Accountings by Jordan;
4. Distribution of the assets on hand in the following amounts; and,
5. The Administrator be authorized to retain \$88,526.84 in closing expenses and to pay liabilities, and to deliver the unused part to the beneficiaries of the estate without further court order after closing expenses have been paid.

TENTATIVE RULING #6:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, AUGUST 19, 2024, IN DEPARTMENT NINE TO DISCUSS THE NECESSITY OF RETAINING \$88,526.84.

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.	23CV0593	IN RE 3882 ARROWHEAD DRIVE
Motion to Amend		

A Petition was filed on April 20, 2023, by Clear Recon Corp, as trustee of the deed of trust for certain real property that was sold at a trustee’s foreclosure sale on December 8, 2022. The Petition states that there remains to be distributed to several potential claimants with conflicting claims the amount of \$303,922.06 in surplus funds remaining from the sale proceeds after deducting trustee fees, expenses, and the court filing fee. The Petition further states that the trustor passed away on August 1, 2009, and his estate was distributed pursuant to probate proceedings in El Dorado Superior Court Case No. PP20090112 (Estate of Curtis D. Hall). The Order Directing Final Distribution on Waiver of Account was filed with the El Dorado Superior Court on June 10, 2011, and provides for a distribution of the interest in the real property located at 3882 Arrowhead Dr., El Dorado Hills, CA and any other property of decedent be distributed to David Z. Hill, Jr. and Jacqueline R. Thomas (“children”) equally.

Pursuant to Civil Code § 2924j(a), on December 12, 2022, Petitioner Clear Recon Corp. sent a notice to all potential claimants with recorded interests in the real property. The Petition was granted on June 23, 2023. The Clerk received the sum of \$303,992.06, after deductions for the trustee’s costs and expenses. (Civil Code § 2924k(a)(1)). Within 90 days of the deposit, the Court was to consider all claims filed at least 15 days prior to the hearing. The Clerk was to serve notice of the hearing by first-class mail on all claimants identified in Petitioner’s declaration. Notice of Entry of the Order was served on the children on August 9, 2023, by mail. On September 19, 2023, counsel for Clear Recon Corp. served the children with Notice of Continued Status Conference Hearing, which included the date, time, and location of the October 27, 2023, hearing.

At the October 27, 2023, hearing there were no appearances. The Minute Order from that hearing were served on counsel for Clear Recon Corp. but it is not clear whether counsel forwarded it to the children. At the hearing on November 20, 2023, there were no appearances by any parties and the matter was dismissed without prejudice.

Jacqueline R. Thomas now brings this Motion to Set Aside and Claim for Surplus Funds, requesting the \$303,992.06 as co-owner of the property. Petitioner requests that the court vacate and set aside entry of dismissal entered on November 20, 2023. She further moves to set aside any order disbursing of surplus funds. The Motion is brought under CCP §473(d) on the grounds that the November 20, 2023, status conference was held due to a clerical error. Petitioner claims she received no notice of the hearing of the November 20, 2023, hearing.

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TENTATIVE RULING #7:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON 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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8.	24PR0158	MATTER OF GILBERT
Successor Trustee		

Dorris Gilbert established the Trust on September 7, 1994, and it was amended on November 18, 2005. The Trust named Dorris's son James Allen Gilbert as the first successor trustee and no alternate successor trustees are listed. Dorris passed away on December 24, 2017, and James began to collect and allocate the Trust assets. James was the sole beneficiary and he had started to transfer assets to himself. On August 10, 2023, James died.

The beneficiary of James' estate is his trust. He leaves behind two adult children, who are Petitioners. They are requesting to serve as co-trustees of Dorris's Trust in order to complete the administration. Both Petitioners consent to the relief requested by the Petition and waive bond.

Probate Code § 15660

- (a) If the trust has no trustee or if the trust instrument requires a vacancy in the office of a co-trustee to be filled, the vacancy shall be filled as provided in this section.
- (b) If the trust instrument provides a practical method of appointing a trustee or names the person to fill the vacancy, the vacancy shall be filled as provided in the trust instrument.
- (c) If the vacancy in the office of trustee is not filled as provided in subdivision (b), the vacancy may be filled by a trust company that has agreed to accept the trust on agreement of all adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time the agreement is made. If a beneficiary has a conservator, the conservator may agree to the successor trustee on behalf of the conservatee without obtaining court approval. Without limiting the power of the beneficiary to agree to the successor trustee, if the beneficiary has designated an attorney in fact who has the power under the power of attorney to agree to the successor trustee, the attorney in fact may agree to the successor trustee.
- (d) If the vacancy in the office of trustee is not filled as provided in subdivision (b) or (c), on petition of any interested person or any person named as trustee in the trust instrument, the court may, in its discretion, appoint a trustee to fill the vacancy. If the trust provides for more than one trustee, the court may, in its discretion, appoint the original number or any lesser number of trustees. In selecting a trustee, the court shall give consideration to any nomination by the beneficiaries who are 14 years of age or older.

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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).

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.	24PR0157	MATTER OF SOUDYN
Letters of Administration		

Decedent died intestate on May 26, 2020, survived by a spouse and two adult children. Petitioner is decedent's spouse.

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

The Petition requests that bond be fixed at \$0.00, with the estate value of \$0.00. However, the Order has the box for "Bond is not required" selected.

A Duties/Liabilities statement (DE-147) was filed on June 3, 2024 and the DE-147S was filed on July 26, 2024.

Proof of service of notice of the hearing on the Petition was filed on July 24, 2024.

Proof of publication was filed on August 9, 2024.

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 SET FOR 8:30 A.M. ON MONDAY, AUGUST 18, 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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10.	23PR0074	ESTATE OF DRYDEN
Status & Petition to Confirm Assets		

Matter was heard on July 8, 2024. The Court notified the parties that if the dispute was not resolved prior to this hearing, that counsel need to be prepared to set trial dates.

TENTATIVE RULING #10:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON 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.

11.	24PR0161	BONSER REVOCABLE TRUST
Objections to Accounting		

The Quentin Bonser, M.D. and Loellen R. Bonser Revocable Living Trust (the Trust) is the subject of this Petition. Both settlors are deceased, and the beneficiaries are their three adult children (Wayne, Patricia, and Carol), plus their daughter-in-law (Cathy). Wayne survived the settlors but has since passed away. His daughter, Marina Bonser, is the personal representative of his estate, and the Petitioner in this case.

The Trust was established on June 12, 1987, amended and restated in full on December 13, 2006, and amended on December 17, 2009, December 16, 2010, and February 7, 2012. The Petition claims the Trust provides for equal distribution among the four beneficiaries. While that is true of the 2006 amendment and restatement, the First Amendment states that Wayne received the Settlor's 2007 Dodge Ram and therefore his share was to be reduced by \$26,000.00.

Patricia became Successor Trustee upon Loellen's death on August 6, 2021. The Petition claims that less than 3 months after the second death, the first and second distributions occurred on November 26 and 29, 2021, and Patricia, Cathy, and Carol received distributions. The Petition states that Wayne did not receive a distribution at this time. Wayne died on December 27, 2021. The Petition states that the third distribution occurred on December 30, 2021¹, when Carol, Patricia, and Cathy received cash distributions, and Wayne's estate was excluded. In late 2022, the fourth distribution occurred and Petitioner claims Patricia, Cathy and Carol each received a distribution, but that Wayne's estate was excluded.

Petitioner claims the Trustee has never converted the stock held by the Bonser Trust into cash, and that by the time Wayne's estate received his stock distribution (November 15, 2023), that the stock value had declined by approximately \$70,000.

The Petition alleges breach of trust by the Trustee.

Duty of Loyalty

Trustee is held to a standard of care in administering the Bonser Trust requiring reasonable care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined from the trust instrument. (California Probate Code §16040(a)) The Trustee owes to the beneficiaries to the Bonser Trust a duty of loyalty to administer the trust, as set forth in California Probate Code §16002(a): "[t]he

¹ The Petition states that Wayne died on December 27, 2021, and that the third distribution occurred "three days after Wayne's death." (¶18) However, the Petition states the distribution occurred on December 30, 2022, which would be 1 year and 3 days after Wayne's death.

trustee has a duty to administer the trust solely in the interest of the beneficiaries. The duty of loyalty includes the equal treatment of the beneficiaries in distribution of trust assets. Bonser Trust provides that in the event of the death of the surviving settlor (Loellen Bonser), the trustee “shall divide the trust property .. into as many shares of equal market value as are necessary to create one share for each [beneficiary]” (Bonser Trust, Article 6, Section 6.3)

Petitioner claims that Trustee violated this duty of loyalty by excluding Wayne and his estate from distributions and failing to distribute the Trust assets equally; she further claims that Trustee’s retention of the stock for over two years resulted in significant loss of value, compared to the market value of the stocks distributed among other beneficiaries.

Duty to Make Trust Property Productive

By the same standard of care charged to the Trustee as described in Paragraph 17, the Trustee has the affirmative fiduciary duty to make trust property productive. California Probate Code § 16007 provides, “[t]he trustee has a duty to make the trust property productive under the circumstances and in furtherance of the purposes of the trust.” Furthermore, Bonser Trust dictates that the trustee’s power to retain the trust property must be “in the best interests of the trust or in furtherance of the goals of the settlors in creating the trust” and that the power is “subject to the standards of the prudent investor rule set forth in the California Uniform Prudent Investor Act, as amended from time to time. (Bonser Trust, Section 7.10)

Petitioner claims that Trustee failed to take necessary steps to preserve trust property by maintaining the stocks and not converting them to cash.

Duty to Avoid Conflict of Interest

By the same standard of care charged to the Trustee as described in Paragraph 17, the Trustee has a fiduciary obligation to avoid conflicts of interest in the administration of the trust. California Probate Code §16004 provides:

- (a) The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.
- (b) The trustee may not enforce any claim against the trust property that the trustee purchased after or in contemplation of appointment as trustee, but the court may allow the trustee to be reimbursed from trust property the amount that the trustee paid in good faith for the claim.
- (c) A transaction between the trustee and a beneficiary which occurs during the existence of the trust or while the trustee's influence with the beneficiary remains and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee's fiduciary duties. This presumption is a presumption affecting the

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burden of proof. This subdivision does not apply to the provisions of an agreement between a trustee and a beneficiary relating to the hiring or compensation of the trustee. (California Probate Code §16004)

Petitioner claims that Trustee failed to avoid an apparent conflict of interest and engaged in self-dealing with other beneficiaries.

The Petition seeks restitution to Wayne's estate or directly to Petitioner for losses incurred due to Trustee's alleged breach of duty, and adjustment of the final distributions to ensure equitable treatment of all beneficiaries.

At the hearing on July 29, 2024, counsel for Petitioner failed to appear.

TENTATIVE RULING #11:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, AUGUST 19, 2024, IN DEPARTMENT NINE.

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12.	24PR0160	MATTER OF BAUER
Petition to Confirm Trust Assets		

Petitioner, as Trustee, brings this Petition seeking an Order that account #6295 at Adams Community Bank Account is an asset of the Barbara A. Stone Revocable Trust. Petitioner is a resident of El Dorado County, which is the principal place of trust administration and the location of day-to-day trust activity.

The Trust was established on May 3, 2018, and decedent executed a Will on May 23, 2018. She died on November 5, 2023. At the time of her death, the bank account was titled in her name as an individual and was not transferred to the Trust. Based on the language of the Trust, it is inferred that Decedent intended that all of her personal property be part of the trust estate.

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 were 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. The notice and Petition were mailed on June 12, 2024, and filed on June 12, 2024.

Pursuant to Probate Code §850 and *Estate of Heggstad* (1993) 16 Cal.App. 4th 943, 947-950, the Court finds sufficient evidence that decedent intended the above-mentioned assets be part of the Trust.

TENTATIVE RULING #12:

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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13.	22PR0133	SIMAS REVOCABLE TRUST
Status Conference		

The Petition at issue was filed in 2022 and requests that the James prepare an accounting and that he be removed as trustee. At the July 31, 2024, mandatory settlement conference, the parties reached a settlement. Filed with the Court are two Stipulated Agreements and Orders. One orders that Morgan Stanley release funds so that the trust administration may proceed.

The second stipulated order confirms that James is resigning as a co-trustee and his vacancy will not be filled. Jean and Gail will remain as co-trustees of the family trust and proceed with distribution as provided in the trust. If Gail ceases to act, her vacancy will be filled according to the Eleventh Amendment of the Trust. If Jean ceases to act, her position shall remain vacant.

James will remain as sole trustee of the residual trust and distribute and/or retain the Morgan Stanley funds as outlined in the Trust and agreed to by the parties. The agreement also contains a mutual release between the parties, which excludes certain claims and provides deadlines for any claims to be brought as a separate action. The agreement resolves the current issues before the court.

TENTATIVE RULING #13:

ABSENT OBJECTION THE STIPULATED ORDERS ARE 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.