

1. ESTATE OF YBANEZ, 22PR0149

Petition to Administer Estate

Petitioner is the brother of decedent, who died intestate on July 3, 2021. Petitioner seeks full authority to administer the estate under the IAEA, without bond. All adult heirs executed waivers of bond, which are attached to the petition.

To date, Proof of Publication is not in the court's file.

**TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M.,
WEDNESDAY, JUNE 22, 2022, IN DEPARTMENT FOUR.**

2. MATTER OF BAIREUTHER TRUST, PP20200155**1st and Final Account and Report of Trustee; Petition for Allowance of Compensation**

The Trustee petitions for the court to allow, settle, approve, and confirm the 1st and Final Account of the Trustee; to fix and allow Trustee compensation as two percent (2%) of the value of the Trust assets per annum in the total amount of \$17,898.22; and to fix and allow payment of the Trustee's attorney fees incurred during administration of the estate in the amount of \$5,000.

The 1st and Final Account was originally set for hearing on May 18, 2022, in Department 8. Thereafter, due to Commissioner Slossberg's recusal, the action was reassigned to Department 4 on June 7, 2022. However, it does not appear from the record that a reassignment order was sent to the Trust beneficiaries. On June 20, 2022, an email was sent to counsel for the Trust beneficiaries, along with an attached ex parte minute order, notifying them of the reassignment to Department 4 and the June 22, 2022, hearing date.

In the tentative ruling for the May 18, 2022, hearing, it was noted there was no proof of service of the notice of hearing and a copy of the account and petition on the Trust beneficiaries in the court's file. On May 18, the Trustee filed the necessary proof of service, which establishes that the Trust beneficiaries were served with notice by mail on March 15, 2022.

On May 3, 2022, beneficiary Patrick Baireuther¹ filed an objection to the 1st and Final Account. Patrick makes objections to the accounting, to the Trustee's requested fee, and to the payment of attorney fees for the Trustee's counsel, and he notes there are several errors in the Account.

¹ To avoid confusion, the court will refer to the Baireuthers by their first names. The court intends no disrespect.

Specifically, he makes the following objections to the accounting: he contends that the Trustee caused an improper withholding from the Franchise Tax Board, for which the Trustee should be surcharged; the tax amounts appear to be excessive and need to be substantiated by the Trustee; he needs an explanation for an item labelled “adjustment” in the amount of \$27,915.21; and in Schedule E, Distributions, it appears that Christopher has obtained most of his distributive share, despite the Trustee’s representation that Christopher and Raymond each received 50 percent of their respective shares.

Patrick further contends that the Trustee is attempting to improperly double the normal trustee fee of 1 percent; and the Trustee cost the Trust money by paying friends and family to clean up the property and rejecting Patrick’s request to assist with the clean up.

With regard to attorney fees, Patrick contends that the Trustee paid approximately \$5,000 from Trust assets to her attorney, in addition to payments to an accounting for a purportedly flawed accounting. Patrick asserts that the majority of these payments were in connection with the Trustee’s year-long campaign to obtain Trust property at a bargain.

Lastly, Patrick claims that as a result of his actions as an objector, the corpus of the Trust increased by \$180,000. He contends that under the common fund doctrine, the Trust should pay the attorney fees incurred by him. He also requests that the Trust pay for his appraisal fees, for water and well testing on the property, and for title company and check cancellation fees incurred as a result of the Trustee’s cancellation of Patrick’s contract to purchase the property.

In reply, the Trustee concedes there are several errors in the Account—including with regard to the appraised value of the property—and that the errors will be corrected and a revised final accounting will be filed. The Trustee explains that the alleged discrepancy with Christopher’s distributive share as compared to Raymond’s is that Raymond had not cashed his check at the time the accounting was filed, and that the “adjustment” was a result of the uncashed check. Regarding taxes, the Trustee agrees to

make available to Patrick copies of state and federal tax returns filed, as well as receipts for payment of these taxes. She further explains that the tax withholding was done by the title company while the property was in escrow, not by the Trustee, and the status of the withholding is being investigated and will be reported on as soon as possible.

She denies Patrick's assertion that she paid her attorney from the Trust for the Trustee's efforts to purchase the property. The Trustee states that those attorney fees were paid separately from the Trustee's own resources and were billed separately from fees incurred for Trust administration. With regard to Patrick's request for attorney fees for his counsel, the Trustee states that this issue was already before the court and was implicitly denied as the common fund doctrine does not apply.

With regard to Patrick's other fees incurred, the Trustee offered to pay Patrick's appraisal fee from the Trust, but he never presented an invoice to her. Nor has he presented any invoices for other payments. The Trustee contends that the Trust should not have to pay for Patrick's title company or check cancellation fees because the Trustee timely complied and cooperated with all of his efforts to purchase the property, and that his failure to do so was because of his own actions. Finally, as to the Trustee's fees, she argues that Probate Code § 15680 authorizes fees as set forth in the Trust instrument and, absent a fee provision in the instrument, a trustee is authorized to accept a reasonable fee. Under the circumstances of this Trust administration, the Trustee asserts that a 2 percent fee is reasonable.

To date, the Trustee has not filed a revised 1st and Final Account. In light of that, and that it appears that several of Patrick's objections will be moot once that revised accounting is filed, appearances are required to set a hearing for revised 1st and Final Account.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M., WEDNESDAY, JUNE 22, 2022, IN DEPARTMENT FOUR.

3. CONSERVATORSHIP OF JOHN S., 22PR0035

Petition to Appoint Probate Conservator

At petitioner's request, this matter was continued from June 1, 2022.

**TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M.,
WEDNESDAY, JUNE 22, 2022, IN DEPARTMENT FOUR.**

4. CONSERVATORSHIP OF NGIMA S., SP20190003**Motion for Leave to File an Amended Petition**

On February 9, 2022, Mary Catherine Gaehwiler and Dr. Robert Closson, appearing in pro per, filed a petition for removal of conservator. The conservator responded to the petition on March 11, 2022, then filed a supplement to the response on March 30, 2022, and a second supplement to the response on April 1, 2022. On April 1, 2022, counsel substituted in on behalf of petitioners. On May 9, 2022, petitioners filed the instant motion for leave to file a First Amended Petition. The motion is opposed by the conservator.

Leave of court is required to amend any pleading except as provided by Code of Civil Procedure § 472. “The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading” (Code Civ. Proc., § 473(a)(1).) A trial court may allow the amendment of a pleading at any time up to and including trial. (Code Civ. Proc., § 576.)

“It is well established that ‘California courts “have a policy of great liberality in allowing amendments at any stage of the proceeding so as to dispose of cases upon their substantial merits where the authorization does not prejudice the substantial rights of others.” [Citation.] Indeed, “it is a rare case in which ‘a court will be justified in refusing a party leave to amend his [or her] pleading so that he [or she] may properly present his [or her] case.’ ” [Citation.] [Citation.] Thus, absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail. [Citation.]” (*Bd. of Trustees v. Superior Court* (2007) 149 Cal.App.4th 1154, 1163.)

“[T]he trial court has wide discretion in determining whether to allow the amendment, but the appropriate exercise of that discretion requires the trial court to consider a number of factors: ‘including the conduct of the moving party and the belated presentation of the amendment. [Citation.] ... The law is well settled that a long deferred presentation of the proposed amendment without a showing of excuse for the delay is itself a significant factor

to uphold the trial court's denial of the amendment. [Citation.]' ” (*Leader v. Health Indus. of America, Inc.* (2001) 89 Cal.App.4th 603, 613.)

Petitioners state that the motion is made on the grounds that the initial petition was filed in pro per, and that once counsel substituted in facts disclosed during discovery led to a broadened scope and cause for removal of the conservator. Counsel for petitioner explains that the motion was not filed earlier because after his substitution on April 1, 2022, he needed to review several years' worth of documents. Petitioners note that no trial date has been set yet, and the proceedings on the petition commenced only recently.

In opposition, the conservator argues there is no reason to allow an amendment to the petition to include financial issues. To demonstrate this, the conservator filed concurrently with her opposition an Inventory and Appraisal and a First Account, which is current from the date funds were received for the conservatee on April 1, 2020. The conservator contends that the court's review of the accounting will resolve any disputed financial issues, without the need for an amended petition. The conservator also argues that she would be unfairly prejudiced by the amendment because she will be required to further litigate a matter already before the court by having to file a response to the amended petition.

The court finds that, on balance, the factors weigh in favor of granting leave to amend. A party is not unfairly prejudiced simply by having to file a new response to an amended pleading. To find otherwise would mean a party would rarely be granted leave to amend, which is contrary to the state's policy of “great liberality” in allowing amendments. Further, no trial date has been set yet. The delay between when petitioners' counsel substituted in and the filing of the instant motion is not unreasonable under the circumstances. The court also notes that the conservator was permitted to file two supplements to her response to the initial petition. It would be unfair to deny petitioners the same opportunity to amend their pleading to ensure all their claims are presented to the court.

Petitioners' motion is granted.

TENTATIVE RULING # 4: PETITIONERS' MOTION FOR LEAVE TO FILE A FIRST AMENDED PETITION IS GRANTED. THE FIRST AMENDED PETITION MUST BE FILED AND SERVED NO LATER THAN JULY 1, 2022. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

5. GUARDIANSHIP OF PRECIOUS C., SP20190026**(1) Annual Status Review Hearing****(2) OSC Re: Guardian's Failure to Appear/Removal of Guardian**

This matter was continued from January 19, 2022, February 16, 2022, March 23, 2022, April 6, 2022, May 4, 2022, and May 18, 2022, due to the guardian's failure to appear for these hearings. At the last hearing, the court continued the matter because the court investigator's report had not yet been filed. The court investigator was appointed on April 6, 2022.

To date, the court investigator's report is not in the court's file.

To date, the annual guardianship status report (Judicial Council Form GC-251) concerning the ward has not been submitted by the guardian.

**TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M.,
WEDNESDAY, JUNE 22, 2022, IN DEPARTMENT FOUR.**

6. GUARDIANSHIP OF ADA D., 22PR0132

Court Trial (Short Cause)

**TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 1:30 P.M.,
WEDNESDAY, JUNE 22, 2022, IN DEPARTMENT FOUR.**