

1. ESTATE OF WALZ PP-20110054

(1) Review Hearing Re: Status of Administration.

(2) Review Hearing Re: Inventory and Appraisal.

The petition for issuance of Letters of Administration to a successor personal representative was granted on March 16, 2016. The Letters of Administration were issued on July 27, 2016.

At the hearing on July 21, 2021 the court granted counsel's request for continuance.

There is no Final Inventory and Appraisal and no Final Account and Request for Order of Final Distribution in the court's file.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, OCTOBER 13, 2021 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

2. ESTATE OF BELLEI PP-20160108

(1) 5th Account and Report.

(2) Review Hearing Re: Status of Administration.

The Account lists a disbursement of \$194,420 for reimbursement of costs advanced on October 19, 2020 without any referenced court order granting such a reimbursement or an itemized explanation of what costs were advanced and when. The personal representative needs to explain this disbursement.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, OCTOBER 13, 2021 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

3. ESTATE OF LARK PP-20190145**Review Hearing Re: Status of Administration.**

Letters of Administration were issued on September 11, 2019. The Final Inventory and Appraisal was filed on November 1, 2019. A Supplemental Inventory and Appraisal was filed on December 14, 2020. There is no Final Account and Request for Order of Final Distribution in the court's file.

The personal representative's counsel reports: it is intended to sell two parcels of unimproved real property in the estate; both beneficiaries do not want to close the estate and take title to these two parcels due to problems with the parcels; the parcels have various problems related to sale, including being subject to the El Dorado County Vegetation and Defensible Space Ordinance, being located a few miles away from the Caldor fire, and potential buyers have had difficulty obtaining information from the County regarding the lots due to the COVID-19 moratorium, the County has stated that the original subdivision plan was not followed, there is no turn around on the higher lot at the end of the street and fire hoses could not reach the back lot, both the seller and the buyer have been unable to find any record of plans that show availability of water to the two parcels, and the rear lot is very small and subject to numerous easements; the personal representative states that if he can not sell the parcels within a reasonable time, his step-daughter and husband are willing to purchase the properties for \$42,500; and if the properties can not be sold within a reasonable time, a petition for preliminary distribution and request for fees will be filed.

TENTATIVE RULING # 3: THIS MATTER IS CONTINUED TO 8:30 A.M. ON WEDNESDAY, FEBRUARY 16, 2022 IN DEPARTMENT EIGHT.

4. ESTATE OF ARANDA PP-20200127

Review Hearing Re: Status of Administration.

Letters of Administration were issued on October 7, 2020. The Final Inventory and Appraisal was filed on May 19, 2021. There is no Final Account and Request for Order of Final Distribution in the court's file.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, OCTOBER 13, 2021 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/online services/vcourt.html.

5. ESTATE OF GEORGESON PP-20200129

Review Hearing Re: Status of Administration.

The order of final distribution was entered on May 19, 2021. The receipts of distribution are in the court's file. There is no ex parte Petition for Final Discharge (Judicial Council Form DE-295.) in the court's file.

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, OCTOBER 13, 2021 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/online services/vcourt.html.

6. ESTATE OF GILMET PP-20200196**Review Hearing Re: Inventory and Appraisal.**

The Inventory and Appraisal filed on September 20, 2021 is deficient for the following reasons: it states it is partial inventory and appraisal number 1, yet the personal representative declares in paragraph three that Attachments 1 and 2 contain all of the estate that has come to her knowledge or possession, which would be a Final Inventory and Appraisal; and the personal representative has appraised personal property as Attachment 1 property, such as a mower, horses, horse trailer, tractor, vehicles and etc., which are all Attachment 2 property that must be appraised by the probate referee.

Except as otherwise provided by statute the probate referee shall appraise all property other than that appraised by the personal representative. (Probate Code, § 8902(b).)

"The personal representative shall appraise the following property, excluding items whose fair market value is, in the opinion of the personal representative, an amount different from the face value of the property: ¶ (a) Money and other cash items. As used in this subdivision, a "cash item" is a check, draft, money order, or similar instrument issued on or before the date of the decedent's death that can be immediately converted to cash. ¶ (b) The following checks issued after the date of the decedent's death: ¶ (1) Checks for wages earned before death. ¶ (2) Refund checks, including tax and utility refunds, and Medicare, medical insurance, and other health care reimbursements and payments. ¶ (c) Accounts (as defined in Section 21) in financial institutions. ¶ (d) Cash deposits and money market mutual funds, as defined in subdivision (b) of Section 9730, whether in a financial institution or otherwise, including a brokerage cash account. All other mutual funds, stocks, bonds, and other securities shall be appraised pursuant to Sections 8902 to 8909, inclusive. ¶ (e) Proceeds of life and accident

insurance policies and retirement plans and annuities payable on death in lump sum amounts.”

(Probate Code, § 8901.)

The above-cited deficiencies need to be corrected.

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, OCTOBER 13, 2021 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/online services/vcourt.html.

7. ESTATE OF NEWLUND PP-20200238

1st and Final Report on Waiver of Account.

Paragraph 12 of the verified petition and final report states that each of the persons entitled to distribution waive the accounting requirement and their waivers will be filed prior to the hearing. There are no waivers of the account requirement in the court's file.

TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, OCTOBER 13, 2021 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/online services/vcourt.html.

8. ESTATE OF WILSON PP-20210077

Review Hearing Re: Inventory and Appraisal.

The Final Inventory and Appraisal filed on September 20, 2021 is deficient for the following reasons: the assets appraised includes real property and the personal representative failed to provide a property tax certificate stating that the requirements of Revenue and Taxation Code, § 480 have been satisfied by filing a change of ownership statement with the County Recorder; and the personal representative's counsel failed to execute the declaration stating the bond was waived. These deficiencies need to be corrected.

TENTATIVE RULING # 8: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, OCTOBER 13, 2021 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/online services/vcourt.html.

9. MATTER OF THE HOWARD E. ASHCRAFT TRUST PP-20210140**Petition to Determine Validity of Purported Trust.**

The conservator of the settlor/successor trustee of the Howard E. Ashcraft Trust (Trust) petitions for a determination whether the changes to Part/Article 10 of the Trust instrument are valid and whether the trustor/conservatee lacked capacity to enact those changes at the time they were made.

The verified petition alleges: the settlor was being taken advantage of financially by transients in his neighborhood and distant family members over a three year period; valuable items were missing from his home and he gave away approximately \$150,000 to strangers and distant relatives; the conservatorship was sought due to him being taken advantage of financially and socially, as well as physical and mental health considerations; the court investigator's report stated the doctor's capacity declaration recommended dementia powers be granted; the general conservatorship was granted on November 13, 2018 and letters issued that same day; conservatee Howard Ashcraft's court appointed counsel took exception to the appointment and filed multiple petitions challenging the conservator's position, competency, seeking to remove the conservator, seeking to appoint a professional fiduciary, and seeking termination of the conservatorship; these petitions were denied by the court; counsel was later relieved as counsel for the conservatee by the court and Terrence Murphy appointed his counsel; prior to being relieved as counsel, the initially appointed counsel for the settlor/conservatee held a meeting on May 16, 2019 with the conservatee at counsel's office at counsel's request; present at the meeting were the proposed substitute fiduciary and three relatives of the settlor/conservatee – Jimmy Crimson, Bobby Crimson, and John Payne; these relatives had all previously taken advantage of the settlor's/conservatee's condition and status;

petitioner was not at the meeting; on information and belief, during the subject meeting a confusing and nearly illegible series of handwritten marks were made on the Declaration of Trust; the handwritten marks seemingly were made using different form of script and made substantial changes to the Trust beneficiaries; the handwritten marks were not witnessed or notarized in writing; petitioner had no knowledge that any changes were made at this time; the day following the meeting, on May 17, 2019, the settlor/conservatee underwent an independent Neuropsychological Capacity Evaluation with Dr. Eric Freitag; at the examination Dr. Freitag observed the conservatee had difficulty recalling specific details and information, especially regarding the conservatorship and other legal matters, his thought processes were somewhat tangential, he demonstrated short-term memory impairments, was repetitive, and appeared to have difficulties retaining details and information; the Doctor also stated that throughout the interview the settlor/conservatee repeatedly recounted certain stories or information and the conservatee had stated the court appointed an attorney for him that he did not like, he was not pleased with his legal representation, and he did not want her representing him; the Doctor further reported that the conservatee indicated he did not understand what the Trust was or how it functions, the other day his counsel put him through revisions to the estate plan, and he had no idea why he changed his estate plan; the Doctor's findings include that the conservatee had a level of misunderstanding towards his estate that renders him at risk for errors in any future estate planning decisions, he may be more susceptible to inadvisable or unduly influenced decisions, and he does not have the functional capacity necessary to make testamentary decisions; Dr. Freitag also concluded that it was his opinion, made with reasonable medical certainty, that the conservatee does not have the functional capacity necessary to make contractual decisions; Dr. Freitag's report also observed in his review of records that the records revealed several alleged instances of the conservatee being

financially exploited and victimized by family while he was living alone; and that handwritten changes to the Trust instrument of unknown origin has resulted in several potential ambiguities in the Trust.

Petitioner's declaration, amended declaration, and Exhibits A-E have been submitted in support of the verified petition.

"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." (Probate Code, § 17200(a).)

"Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes: ¶ * * * (3) Determining the validity of a trust provision." (Probate Code, § 17200(b)(3).)

"A proceeding under this chapter is commenced by filing a petition stating facts showing that the petition is authorized under this chapter. The petition shall also state the grounds of the petition and the names and addresses of each person entitled to notice of the petition." (Probate Code, § 17201.)

"At least 30 days before the time set for the hearing on the petition, the petitioner shall cause notice of hearing to be mailed to all of the following persons: ¶ (1) All trustees. ¶ (2) All beneficiaries, subject to Chapter 2 (commencing with Section 15800) of Part 3. ¶ (3) The Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General." (Probate Code, § 17203(a).)

"At least 30 days before the time set for hearing on the petition, the petitioner shall cause notice of the hearing and a copy of the petition to be served in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure on any person, other than a trustee or beneficiary, whose right, title, or interest would be affected by

the petition and who does not receive notice pursuant to subdivision (a). The court may not shorten the time for giving notice under this subdivision.” (Probate Code, § 17203(b)).

The proofs of service declare that on July 9, 2021 the interested persons listed in the verified petition were served notice of the initial hearing and a copy of the petition by mail to the addresses listed in the verified petition; and on September 16, 2021 nearly all interested persons listed in the verified petition were served notice of the continued hearing and a copy of the petition by mail to the addresses listed in the verified petition, with the certain exceptions stated below.

The verified petition states that interested party Jimmy Crimson has two addresses, one in Davis on Glide Drive and another in West Sacramento. The proof of service of notice of the continued hearing and a copy of the petition filed on September 20, 2021 declares that he was served by mail to an address on Full Circe in Davis. This needs to be explained.

The verified petition lists counsel Terrence Murphy representing Howard Ashcraft as a person entitled to notice. The proof of service of the continued hearing and a copy of the petition filed on September 20, 2021 does not list him as having been served the notice of hearing and petition documents by mail. This needs to be explained.

The First District Court of Appeal has held: “A person challenging the validity of a trust instrument on the grounds that the trustor lacked capacity to execute the document or did so under the undue influence of another carries the heavy burden of proving such allegations. Section 810, subdivision (a) creates “a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions.” Under section 811, a determination that a person lacks the capacity to execute a trust must be supported by evidence of a deficit in at least one of specified mental functions that “by itself or in combination with one or more other mental function deficits significantly

impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question." (§ 811, subds. (a), (b).) And in determining capacity to execute a trust amendment that "in its content and complexity, closely resembles a will or codicil," the courts have held that the lower mental capacity standard for the making of a will should apply. (*Andersen v. Hunt* (2011) 196 Cal.App.4th 722, 729–731, 126 Cal.Rptr.3d 736; *Lintz v. Lintz* (2014) 222 Cal.App.4th 1346, 1351–1352, 167 Cal.Rptr.3d 50; § 6100.5.) [FN 7] "[T]he standard for testamentary capacity is exceptionally low." (*In re Marriage of Greenway* (2013) 217 Cal.App.4th 628, 642, 158 Cal.Rptr.3d 364.) Similarly, "the party contesting a testamentary disposition bears the burden of proving undue influence" and "[u]ndue influence must be proven by clear and convincing evidence." (*Conservatorship of Davidson* (2003) 113 Cal.App.4th 1035, 1059, 6 Cal.Rptr.3d 702, disapproved on other grounds in *Bernard v. Foley* (2006) 39 Cal.4th 794, 816, fn. 14, 47 Cal.Rptr.3d 248, 139 P.3d 1196; § 8252, subd. (a).) It is entirely consistent with these principles that the trust should ordinarily be administered according to its terms unless and until the party challenging its validity sustains its heavy burden of proof. ¶ FN 7. The parties have not addressed and we express no opinion as to the proper standard to be applied on remand." (Doolittle v. Exchange Bank (2015) 241 Cal.App.4th 529, 545–546.)

On the other hand, the Sixth District Court of Appeal was of the opinion that where the issues in a trust are complex, the sliding scale standard for contracts apply to the determination of capacity to execute the trust instrument, rather than the testamentary standard of lack of capacity. The Sixth District stated: "Adopting the reasoning of *Anderson* we conclude that the probate court erred by applying the Probate Code section 6100.5 testamentary capacity standard to the trusts and trust amendments at issue in this case instead of the sliding-scale contractual standard in Probate Code sections 810 through 812.

The trust instruments here were unquestionably more complex than a will or codicil. They addressed community property concerns, provided for income distribution during the life of the surviving spouse, and provided for the creation of multiple trusts, one contemplating estate tax consequences, upon the death of the surviving spouse.” (Lintz v. Lintz (2014) 222 Cal.App.4th 1346, 1352–1353.)

“A person lacking capacity to make an ordinary transfer of property has no capacity to create an inter vivos trust.” (Rest.2d Trusts, §§ 19, 333 (see comment f, p. 151); 3 Scott on Trusts (2d ed.) § 333.2, p. 2425; Bogert on Trusts (2d ed.) § 997, p. 450 et seq.) Incapacity, as in the case of contracts generally, may arise from intoxication of such a degree as to deprive a person of reason and understanding. (*Guidici v. Guidici* (1935) 2 Cal.2d 497, 502, 41 P.2d 932.) In *Stratton v. Grant* (1956) 139 Cal.App.2d 814, 817, 294 P.2d 500, 501, the court formulated the following rule: 'It has been established that in order to have relief under * * * [Civ.Code, § 39] it is not necessary that one be incompetent to enter into any kind of contract or to transact any business. Rather the test is whether or not the party was mentally competent to deal with the subject before him with a full understanding of his rights. Such a question is to be determined by the court or jury and if there is found in the evidence any rational ground supporting its determination its conclusion on this point will be upheld. *Pomeroy v. Collins*, 198 Cal.2d 46, 69, 243 P. 657; *Carr v. Sacramento Clay Products Co.*, 35 Cal.App. 439, 170 P. 446.' See also *Philbrook v. Howard* (1958) 157 Cal.App.2d 210, 214, 320 P.2d 609; *Peterson v. Ellebrecht* (1962) 205 Cal.App.2d 718, 721, 26 Cal.Rptr. 252.) The determination of the trier of fact that a person was competent to enter into a contract made upon substantial evidence is therefore binding on appeal. (*Philbrook v. Howard*, supra; *In re Estate of Miller* (1956) 143 Cal.App.2d 544, 549-550, 299 P.2d 1005; *Wilson v. Sampson* (1949) 91 Cal.App.2d 453, 458-

460, 205 P.2d 753.)" (Emphasis added.) (Walton v. Bank of California, Nat. Assoc. (1963) 218 Cal.App.2d 527, 541.)

"The testimony of Drs. Platzer and Spar, who regularly determine capacity, amply supported the conclusion that Donald was incapable of managing his affairs under the criteria in section 811, the relevant criteria under the terms of the Sterling Family Trust. Dr. Platzer concluded that Donald had "an impairment of his level of attention, information processing, short term memory impairment and ability to modulate mood, emotional lability, and is at risk of making potentially serious errors of judgment." These were factors under section 811 supporting her determination that Donald lacked capacity. Dr. Spar concluded that "[b]ecause of his cognitive impairment, Mr. Sterling is at risk of making potentially serious errors of judgment, impulse control, and recall in the management of his finances and his trust. Accordingly, in my opinion he is substantially unable to manage his finances and resist fraud and undue influence, and is no longer competent to act as trustee of his trust." Dr. Spar expressly testified he considered section 811 and used those factors to conclude that Donald was no longer able to serve as trustee. His conclusion is consistent with the factors enumerated in section 811. ¶ Further there was evidence that Donald's impairments correlated to his ability to act as trustee. The trustee had all powers to employ persons, pay expenses, hold, manage, and control and sell property, operate business, and borrow and lend money. The trust included ownership of the corporation that owned the stock of the Clippers. The trust additionally owned about 150 apartment buildings, 15 residential properties, land, and a hotel. There were approximately 10,000 units to manage. Three banks held loans totaling about \$480 million. Errors of judgment, impulse control and inability to recall are correlated to Donald's ability to manage the substantial trust assets. The inability to resist fraud and undue influence also are correlated to his ability to manage these assets. Stated otherwise, there was a clear

link between the imparities Drs. Platzer and Spar found and the ability to perform the duties of the trustee. (See *In re Marriage of Greenway* (2013) 217 Cal.App.4th 628, 640, 158 Cal.Rptr.3d 364 [under § 811["[t]here must be a causal link between the impaired mental function and the issue or action in question".])" (Emphasis added.) (*Sterling v. Sterling* (2015) 242 Cal.App.4th 185, 197–198.)

Although there are no oppositions or objections in the court's file, an objection can be made at any time and even orally at the hearing. (Probate Code, § 1043.) Therefore, appearances are required.

TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, OCTOBER 13, 2021 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

10. ESTATE OF JOHNSON PP-20210160

Petition to Administer Estate.

The intestate heirs of the estate have executed and filed waivers of the bond requirement.

The petitioner has not filed an executed a statement of duties and liabilities. (Judicial Council Form DE-147.) Prior to issuing letters of administration, the personal representative, other than a trust company or public administrator, shall file an acknowledgement of receipt of a statement of duties and liabilities of the office of personal representative. The statement is a mandated Judicial Council form. (Probate Code, § 8404(a).)

The court notes that there is no proof of service of notice of the hearing and a copy of the petition by mail on the heirs, devisees and executors in the court's file. "At least 15 days before the hearing of a petition for administration of a decedent's estate, the petitioner shall serve notice of the hearing by mail or personal delivery on all of the following persons: (a) Each heir of the decedent, so far as known to or reasonably ascertainable by the petitioner. (b) Each devisee, executor, and alternative executor named in any will being offered for probate, regardless of whether the devise or appointment is purportedly revoked in a subsequent instrument." (Probate Code, § 8110.) The notice of hearing of a petition for administration of a decedent's estate that is served on the interested persons shall substantially state the language set forth in Section 8100. (Probate Code, § 8100.) Petitioner failed to provide a proof of service of the mandatory Judicial Council Form DE-121 – Notice of Petition to Administer Estate, which includes the statutory notice language.

The court can not rule on the merits of the petition absent proof of adequate service on all intestate heirs

TENTATIVE RULING # 10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, OCTOBER 13, 2021 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/online services/vcourt.html.

11. ESTATE OF BOESCH PP-20210161

Petition to Admit Will to Probate.

There is no proof of publication in the court's file. (See Probate Code, §§ 8120 and 8121(a).) The court can not consider this petition absent proof of publication.

The court notes that there is no proof of service of notice of the hearing and a copy of the petition by mail on the heirs, devisees and executors in the court's file. "At least 15 days before the hearing of a petition for administration of a decedent's estate, the petitioner shall serve notice of the hearing by mail or personal delivery on all of the following persons: (a) Each heir of the decedent, so far as known to or reasonably ascertainable by the petitioner. (b) Each devisee, executor, and alternative executor named in any will being offered for probate, regardless of whether the devise or appointment is purportedly revoked in a subsequent instrument." (Probate Code, § 8110.) The notice of hearing of a petition for administration of a decedent's estate that is served on the interested persons shall substantially state the language set forth in Section 8100. (Probate Code, § 8100.) Petitioner failed to provide a proof of service of the mandatory Judicial Council Form DE-121 – Notice of Petition to Administer Estate, which includes the statutory notice language.

The court can not rule on the merits of the petition absent proof of adequate service on all interested parties.

TENTATIVE RULING # 11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, OCTOBER 13, 2021 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/online services/vcourt.html.

12. ESTATE OF BURGON PP-20210163

Petition to Administer Estate.

Petitioner needs to execute and file a Judicial Council form waiver of the bond requirement as promised in paragraph 3.e.(3) of the petition.

TENTATIVE RULING # 12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, OCTOBER 13, 2021 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/online services/vcourt.html.

13. ESTATE OF TAYLOR PP-20210164

Petition to Administer Estate.

TENTATIVE RULING # 13: THE PETITION IS GRANTED. BOND IS SET IN THE AMOUNT OF \$347,700 AS REQUESTED. THE COURT SETS A REVIEW HEARING RE: INVENTORY AND APPRAISAL AT 8:30 A.M. ON WEDNESDAY, FEBRUARY 16, 2022 IN DEPARTMENT EIGHT. (PROBATE CODE, § 8800 (b).) THE COURT FURTHER SETS A REVIEW HEARING RE: STATUS OF ADMINISTRATION AT 8:30 A.M. ON WEDNESDAY, OCTOBER 12, 2022 IN DEPARTMENT EIGHT. (PROBATE CODE, § 12200.)

14. MATTER OF THE GOTTARDI TRUST PP-20210178**Petition to Construe Trust Instruments and to Suspend and Remove Trustee.**

Trust beneficiaries Alida Sinclair and Renee Dale request the court issue the following orders: finding that the June 2020 Amendment to the Trust instrument is valid; construing the distributive provisions of the Trust such that it requires the trustee to distribute the Trust's assets according to the terms of the Trust instrument dated September 15, 2010 and the June 2020 amendment to the survivor's trust as intended by the surviving settlor/spouse to amend the terms of the survivor's trust and make different distributions from the survivor's trust and exemption trust; direct the trustee to distribute the Trust's funds according to the court's construction of the Trust and its amendments; find that trustee Musick breached the Trust; remove trustee Musick; suspend trustee Musick's powers pending the determination of whether to remove her as trustee; appoint Judith Currier as successor trustee or temporary successor trustee upon suspension or removal of trustee Musick; and awarding petitioners' reasonable attorney fees and cost of suit.

The verified petition alleges: the March 2020 amendment funded the survivor's trust with the surviving spouse's separate property and his ½ share of the community property and amended the Trust's distributive provisions of Article Eight, paragraph D.1.a.; although the June 2020 amendment is not executed, he delivered the amendment to alternate successor trustee Judith Currier in an envelope, which was signed by the settlor/surviving spouse on the outside of the envelope, dated 6-1-20, and contained notations "GOOD" next to the date and "KEEP" next to the signature (Verified Petition, Exhibit D.); the June 2020 amendment funded the survivor's trust with the surviving spouse's separate property and his ½ share of the community property and amended the Trust's distributive provisions of Article Eight, paragraph

D.1.a.; the surviving settlor passed away on July 20, 2020; the Trust assets upon his death amounted to \$4 million or more; after the surviving settlor's death trustee Musick sold some or all of the Trust's real property, distributed some trust funds, failed to follow the Trust's terms and instead distributed the Trust funds according to her own wishes; the trustee substituted her own wishes related to distributions for those of settlor Joseph Gottardi; and on April 13, 2021 trustee Musick refused petitioners' March 29, 2021 request for an accounting and refused to distribute further funds to petitioners.

The March 2020 and June 2020 amendments to the Trust name Judith Currier as the alternate successor trustee. (See Verified Petition, Exhibits B and C.)

Article Six provides that after the death of the deceased spouse, the surviving spouse may amend, revoke, or terminate the Survivor's Trust, but can not amend, revoke or terminate the exemption trust. (Verified Petition, Exhibit A – September 15, 2010 Trust Instrument, Article Six, page 8.) Article Eight, paragraph B. provides that to the extent that the deceased surviving spouse has not effectively disposed of the assets of the survivor's trust by an effective and valid power of appointment, all remaining assets of the survivor's trust shall be distributed to the trustee of the exemption trust to be added to and form part of the assets of the exemption trust and thereafter held, administered and distributed as part of the exemption trust. (Verified Petition, Exhibit A – September 15, 2010 Trust Instrument, Article Eight, paragraph B.) Exhibits B and C are asserted to be amendments deleting the distributions set forth in Article Eight, paragraph D.1.a. of the September 15, 2020 Trust instrument and replacing it with another list of distributions from the Trust upon the death of the surviving spouse/settlor. (Verified Petition, Exhibit B – March 2020 Amendment and Exhibit C – June 2020 Amendment.) Paragraph D.1.a. is the distributive provisions of the exemption trust.

The verified petition admits that the two amendments occurred after settlor Patricia Gottardi passed away. (See Verified Petition, page 1, lines 25-28.) The amendments expressly state they are deleting and replacing the distributive provisions of the Exemption Trust by amendment after the deceased settlor's death.

Petitioners contend that the two amendments after the deceased spouse's death were clearly intended to amend the distribution of the assets in the survivor's trust and that intent should be effectuated.

The proofs of service declare that on August 5, 2021 notice of the hearing and a copy of the petition were served on the interested persons by mail and on September 9, 2021 a declaration regarding the Trust's misidentification of Scott Pfefer was served on the interested parties by mail.

On October 6, 2021 trustee/residuary beneficiary Judy Musick filed a response and objections to the petition. Respondent trustee Musick argues: the construction of the Trust asserted by petitioners is not supported by the facts or law; the purported June amendment was never executed by surviving spouse/settlor Joseph Gottardi and is merely a draft; the exemption trust was never funded and there is no provision in the Trust for distributions from both the survivor's trust and the exemption trust; the trustee has done nothing wrong; the trustee never refused to account, an account is being prepared, and it will be filed with the court shortly; and petitioners have been distributed everything they are entitled to under the terms of the Trust, therefore they have no standing to maintain this petition and the petition should be dismissed.

A trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust. (Probate Code, § 17200(a).) Proceedings concerning the internal

affairs of the trust include, but are not limited to, determining questions of construction of a trust instrument. (Probate Code, § 17200(b)(1).)

“[T]he primary rule in construction of trusts is that the court must, if possible, ascertain and effectuate the intention of the trustor or settlor.’ (*Ephraim v. Metropolitan Trust Co.* (1946) 28 Cal.2d 824, 834, 172 P.2d 501.) ‘The intention of the transferor as expressed in the [trust] instrument controls the legal effect of the dispositions made in the instrument.’ (Prob.Code, §§ 21101, 21102.)” (Crook v. Contreras (2002) 95 Cal.App.4th 1194, 1206.) “In construing a trust instrument, the intent of the trustor prevails and it must be ascertained from the whole of the trust instrument, not just separate parts of it. (Citation omitted.)” (Scharlin v. Superior Court (1992) 9 Cal.App.4th 162, 168.) “Particularly in the field of interpreting trusts and wills, each case depends upon its own peculiar facts, and ‘ “precedents have comparatively small value....” ’ (*Estate of Lawrence* (1941) 17 Cal.2d 1, 6, 108 P.2d 893; *Estate of Russell*, supra, 69 Cal.2d at pp. 210-211, 70 Cal.Rptr. 561, 444 P.2d 353.) It is the intention of the trustor, not the trustor’s lawyer, which is the focus of the court’s inquiry. (*Estate of Lindner* (1978) 85 Cal.App.3d 219, 226, 149 Cal.Rptr. 331.)” (Wells Fargo Bank v. Marshall (1994) 20 Cal.App.4th 447, 453.) The court’s duty is to determine the trustor’s intent and when determined, to give effect to that intent. That intent is to be gathered from the expressions in the trust. The centerpiece of that interpretation is the language contained within the will or in the trust document. (Estate of Parrette (1985) 165 Cal.App.3d 157, 161.)

“It is now well settled that no matter how clear and unambiguous language may appear to the reader, extrinsic evidence is admissible for the purpose of ascertaining what was meant by the person using the words in question. (*Delta Dynamics, Inc. v. Arioto* (1968) 69 Cal.2d 525, 72 Cal.Rptr. 785, 446 P.2d 785; *Estate of Russell* (1968) 69 Cal.2d 200, 70 Cal.Rptr. 561, 444 P.2d 353; *Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 69

Cal.Rptr. 561, 442 P.2d 641.) The extrinsic evidence, however, may not show that what was meant by the words used was something to which, under all of the circumstances, the words are not reasonably susceptible.” (Levy v. Crocker-Citizens Nat. Bank (1971) 14 Cal.App.3d 102, 104.)

“In interpreting a document such as a trust, it is proper for the trial court in the first instance and the appellate court on de novo review to consider the circumstances under which the document was made so that the court may be placed in the position of the testator or trustor whose language it is interpreting, in order to determine whether the terms of the document are clear and definite, or ambiguous in some respect. (*Estate of Russell* (1968) 69 Cal.2d 200, 208-210, 70 Cal.Rptr. 561, 444 P.2d 353.) Thus, extrinsic evidence as to the circumstances under which a written instrument was made is admissible to interpret the instrument, although not to give it a meaning to which it is not reasonably susceptible. (Id. at p. 211, 70 Cal.Rptr. 561, 444 P.2d 353.) On review of the trial court's interpretation of a document, the appellate court's proper function is to give effect to the intention of the maker of the document. (Id. at p. 213, 70 Cal.Rptr. 561, 444 P.2d 353.)” (Wells Fargo Bank v. Marshall (1994) 20 Cal.App.4th 447, 453.)

“...[E]xtrinsic evidence which legitimately bears on intent is admissible only when the trust instrument is unclear or ambiguous (*Page/ v. Shipp*, 68 Cal.App.2d 12, 20, 155 P.2d 878.)” (Kropp v. Sterling Sav. & Loan Assn. (1970) 9 Cal.App.3d 1033, 1045.)

“The words of an instrument are to be given their ordinary and grammatical meaning unless the intention to use them in another sense is clear and their intended meaning can be ascertained. Technical words are not necessary to give effect to a disposition in an instrument. Technical words are to be considered as having been used in their technical sense unless (a) the context clearly indicates a contrary intention or (b) it satisfactorily appears that the

instrument was drawn solely by the transferor and that the transferor was unacquainted with the technical sense.” (As amended.) (Probate Code, § 21122.) “Ordinary words must be given their normal, popular meaning and legal terms are presumed to be used in their legal sense. (*Poaq v. Winston*, supra, 195 Cal.App.3d at p. 1173, 241 Cal.Rptr. 330.)” (Scharlin v. Superior Court (1992) 9 Cal.App.4th 162, 168.)

““The interpretation of a written instrument, including a ... declaration of trust, presents a question of law unless interpretation turns on the competence or credibility of extrinsic evidence or a conflict therein. Accordingly, a reviewing court is not bound by the lower court's interpretation but must independently construe the instrument at issue. [Citations.]’ [Citations.]’ (*Scharling v. Superior Court* (1992) 9 Cal.App.4th 162, 168, 11 Cal.Rptr.2d 448.) ‘In construing a trust instrument, the intent of the trustor prevails and it must be ascertained from the whole of the trust instrument, not just separate parts of it. [Citation.]’ (Ibid.)” (Wells Fargo Bank v. Marshall (1994) 20 Cal.App.4th 447, 452-453.)

“Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes: ¶ * * * (10) Appointing or removing a trustee.” (Probate Code, § 17200(b)(10).)

“A trustee may be removed in accordance with the trust instrument, by the court on its own motion, or on petition of a settlor, cotrustee, or beneficiary under Section 17200.” (Probate Code, § 15642(a).)

“If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or

temporary trustee. The court may also suspend the powers of the trustee to the extent the court deems necessary." (Probate Code, § 15642(e).)

"If a trustee commits a breach of trust, or threatens to commit a breach of trust, a beneficiary or cotrustee of the trust may commence a proceeding for any of the following purposes that is appropriate: ¶ (1) To compel the trustee to perform the trustee's duties. ¶ (2) To enjoin the trustee from committing a breach of trust. ¶ (3) To compel the trustee to redress a breach of trust by payment of money or otherwise. ¶ (4) To appoint a receiver or temporary trustee to take possession of the trust property and administer the trust. ¶ (5) To remove the trustee. ¶ (6) Subject to Section 18100, to set aside acts of the trustee. ¶ (7) To reduce or deny compensation of the trustee. ¶ (8) Subject to Section 18100, to impose an equitable lien or a constructive trust on trust property. ¶ (9) Subject to Section 18100, to trace trust property that has been wrongfully disposed of and recover the property or its proceeds." (Probate Code, § 16420(a).)

"A violation by the trustee of any duty that the trustee owes the beneficiary is a breach of trust." (Probate Code, § 16400.)

The Third District Court of Appeal has stated: "A trustee may be removed by a court for misconduct, unfitness, or acquisition of an adverse interest. (See, e.g., Prob.Code, § 15642; 11 Witkin, Summary of Cal.Law (9th ed. 1990) Trusts, § 55.)" (Claypool v. Wilson (1992) 4 Cal.App.4th 646, 676.)

Appearances are required regarding the issue of whether the trustee should be suspended and replaced by a temporary trustee pending resolution of this matter; and to set a trial date, issues conference date, and mandatory settlement conference date.

TENTATIVE RULING # 14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, OCTOBER 13, 2021 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES

WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH
MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT
www.eldoradocourt.org/online services/vcourt.html.

15. ESTATE OF STURGESS PP-20210179

Petition to Admit Will to Probate.

TENTATIVE RULING # 15: THE PETITION IS GRANTED. THE WILL IS ADMITTED TO PROBATE. BOND IS SET IN THE AMOUNT OF \$900,000 AS REQUESTED. THE COURT SETS A REVIEW HEARING RE: INVENTORY AND APPRAISAL AT 8:30 A.M. ON WEDNESDAY, FEBRUARY 16, 2022 IN DEPARTMENT EIGHT. (PROBATE CODE, § 8800 (b).) THE COURT FURTHER SETS A REVIEW HEARING RE: STATUS OF ADMINISTRATION AT 8:30 A.M. ON WEDNESDAY, OCTOBER 12, 2022 IN DEPARTMENT EIGHT. (PROBATE CODE, § 12200.)

16. ESTATE OF MORRISON PP-20210185**Spousal Property Petition.**

There is no proof of service of notice of the hearing and a copy of the petition on the interested persons in the court's file. Notice of the hearing of a spousal property petition must be provided to each person listed in Probate Code, § 1220, each person named as executor in any will of the deceased spouse, all devisees and known heirs of the deceased spouse; all persons interested in a trust if the petitioner is the trustee of a trust that is a devisee under the will; and to the Attorney General if the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will of the deceased spouse and the will involves or may involve either a testamentary trust of property for charitable purposes other than a charitable trust with a designated trustee, who is a resident of this state, or a devise for a charitable purpose without an identified devisee or beneficiary. (Probate Code, § 13655.)

While paragraph 5 of the petition states that decedent died leaving no child or issue of a predeceased child, petitioner failed to complete paragraph 6, which specifies whether decedent was survived by parents, brothers, sisters, or issue of deceased brothers and/or sisters. This needs to be answered.

The spousal property petition is deficient in that it fails to list the names and addresses of the interested persons entitled to notice of this proceeding in paragraph 9 of the petition, including all persons named in decedent's will and intestate heirs, and the names and addresses of all named executors in decedent's attached will. Therefore, the court has no manner in which to verify that all interested persons are properly served notice of the hearing

and a copy of the petition an adequate time prior to the hearing date. This needs to be remedied.

TENTATIVE RULING # 16: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, OCTOBER 13, 2021 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.