

1. ESTATE OF FOWLER PP-20210174

Petition to Administer Estate.

TENTATIVE RULING # 1: THE PETITION IS GRANTED. THE COURT SETS A REVIEW HEARING RE: INVENTORY AND APPRAISAL AT 8:30 A.M. ON WEDNESDAY, MARCH 2, 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, NOVEMBER 2, 2022 IN DEPARTMENT EIGHT. (PROBATE CODE, § 12200.)

2. ESTATE OF KIRKPATRICK PP-20200145

Petition for Order of Final Distribution on Waiver of Account.

Paragraph 9 of the verified petition states: creditor's claims filed by Bank of America, Capitol One, and American Express were rejected on February 3, 2021; and the creditor's claim of Promised Landscape Service was rejected in part and allowed in part on August 5, 2021.

Prayer number 4 on page 1 of the verified petition seeks an order authorizing payment of the claims of P,G,&E and Renee and Company in full and the partial payment of the claim of Promised Landscape Service.

Letters of Administration were issued on January 13, 2021. While the American Express claim for \$9,387.54 was rejected on April 2, 2021, on February 16, 2021 American Express filed a 2nd, apparently amended, claim for \$10,616.30, which was well within the period to file creditor claims. The amended claim has not been addressed. This needs to be explained.

The 90 day period for creditor Promised Landscape Service to file a lawsuit on the rejected portion of the claim will not expire until two days after the date of the hearing, Therefore, the estate is not in a condition to be closed until the close of court business on November 5, 2021 and can not close if a lawsuit is filed on this claim or before November 5, 2021.

The petition does not state whether any lawsuits were timely filed on the rejected claims. The estate is not in a condition to be closed until the 90 day period after notice of rejection has passed, no action was filed, and the personal representative verifies under oath that no actions were filed on the rejected claims.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 3, 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.eldorado.courts.ca.gov/online-services/telephonic-appearances.

3. ESTATE OF KURTZ PP-20190062

(1) Amended 1st and Final Account.

(2) Review Hearing Re: Status of Administration.

TENTATIVE RULING # 3: THE PETITION IS GRANTED. THE AMENDED 1ST AND FINAL ACCOUNT IS ALLOWED, SETTLED, APPROVED AND CONFIRMED. REIMBURSEMENT FOR EXPENSES ADVANCED IS GRANTED AS REQUESTED. FEES ARE FIXED AND PAYMENT ALLOWED AS REQUESTED. FINAL DISTRIBUTION IS ORDERED AS REQUESTED. THE COURT CONTINUES THE REVIEW HEARING RE: STATUS OF ADMINISTRATION TO 8:30 A.M. ON WEDNESDAY, FEBRUARY 23, 2022 IN DEPARTMENT EIGHT AT WHICH TIME THE COURT ANTICIPATES THAT THE RECEIPT OF FINAL DISTRIBUTION EXECUTED BY THE TRUSTEE OF THE DONNA INGRID KURTZ REVOCABLE LIVING TRUST WILL HAVE BEEN FILED AND AN EX PARTE PETITION FOR FINAL DISCHARGE (JUDICIAL COUNCIL FORM DE-295.) SUBMITTED.

4. ESTATE OF STEWART PP-20200115

Review Hearing Re: Status of Administration.

Letters of Administration were issued on November 13, 2020. There is no Final Inventory and Appraisal in the court's file and no Final Account and Request for Order of Final Distribution in the court's file.

Intestate heir Jeffrey Stewart filed a petition to confirm that a TD Ameritrade account was an asset of the trust estate. A settlement was reached at the MSC on September 23, 2021 and a written stipulation for settlement was drafted and executed by all parties. The court inquired at the MSC and each of the parties confirmed in the MSC hearing that they agreed to the stipulation as written. It was agreed that Paul Stewart would draft a more formal order and written settlement agreement. The formal order and written settlement agreement is not in the court's file.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 3, 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.eldorado.courts.ca.gov/online-services/telephonic-appearances.

5. ESTATE OF JOHNSON PP-20210202

Spousal Property Petition.

TENTATIVE RULING # 5: ABSENT OPPOSITION, THE PETITION IS GRANTED.

6. ESTATE OF O'HARE-HALL PP-20190100

1st and Final Account and Report and Request for Order of Final Distribution.

The verified petition requests the court to fix and allow extraordinary compensation for the personal representative's counsel in the amount of \$8,000, which the petition states is supported by counsel's declaration filed with the petition. (See Petition, paragraph 39.) The court can not find counsel's declaration in the court's file. The court needs the declaration in order to rule on the request for extraordinary fees in this insolvent estate.

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 3, 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.eldorado.courts.ca.gov/online-services/telephonic-appearances.

7. ESTATE OF ZINK PP-20210010

1st and Final Account and Report and Request for Order of Final Distribution.

TENTATIVE RULING # 7: THE PETITION IS GRANTED. THE 1ST AND FINAL ACCOUNT IS ALLOWED, SETTLED, APPROVED AND CONFIRMED. FEES ARE FIXED AND PAYMENT ALLOWED AS REQUESTED. FINAL DISTRIBUTION IS ORDERED AS REQUESTED. THE COURT CONFIRMS THE REVIEW HEARING RE: STATUS OF ADMINISTRATION SET FOR 8:30 A.M. ON WEDNESDAY, MARCH 9, 2022 IN DEPARTMENT EIGHT AT WHICH TIME THE COURT ANTICIPATES THAT THE RECEIPTS OF FINAL DISTRIBUTION WILL HAVE BEEN FILED AND AN EX PARTE PETITION FOR FINAL DISCHARGE (JUDICIAL COUNCIL FORM DE-295.) SUBMITTED.

8. ESTATE OF PETANOVOCH PP-20200182

- (1) Review Hearing Re: Inventory and Appraisal.
- (2) Review Hearing Re: Status of Administration.

Letters of Administration were issued on January 13, 2021. There is no Final Inventory and Appraisal and no Final Account and Request for Final Distribution in the court's file.

TENTATIVE RUIING # 8: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 3, 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.eldorado.courts.ca.gov/online-services/telephonic-appearances.

9. ESTATE OF WINKLER PP-20120040

(1) Final Account and Report.

(2) Review Hearing Re: Status of Administration.

Letters of Administration were issued on May 25, 2012. The Final Inventory and Appraisal was filed on March 27, 2013. At the hearing on September 23, 2015 the court was advised that a murder conviction that impacts the administration of the instant estate was on appeal. At the hearing on August 4, 2021 the court continued the review hearing to this date and set a hearing on the Final Account and Report for this date. There is no Final Account and Report in the Court's file.

TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 3, 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.eldorado.courts.ca.gov/online-services/telephonic-appearances.

10. ESTATE OF PATEL PP-20210201

Spousal Property Petition.

TENTATIVE RULING # 10: THE PETITION IS GRANTED.

11. ESTATE OF LINDA DROSTE PP-20210194**Petition to Determine Succession to Real Property.**

Petitioner apparently claims that trustor Linda Droste succeeded to a 50% interest in certain real property after Mildred Droste passed away; the other 50% interest was already owned by Linda Droste as trustee of her Living Trust; and petitioner succeeded to 100% ownership of the property as the sole "heir in Trust". The petition alleges that record title is held in the names of Mildred Droste as owner of 50% of the real property as a tenant in common and the remaining 50% interest owned by Linda Droste as trustee of the Linda L. Lee Droste Living Trust as a tenant in common; Mildred Droste passed away intestate on February 1, 2016 and Linda Droste survived her as her sole intestate heir, but later passed away on February 12, 2021; and Linda Droste's pour-over will leaves the remainder of her estate to the Trust.

Petitioner seeks a court order determining that Linda Droste's 50% interest in the subject real property passed to her without need for administration of decedent's estate.

"Exclusive of the property described in Section 13050, if a decedent dies leaving real property in this state and the gross value of the decedent's real and personal property in this state does not exceed one hundred fifty thousand dollars (\$166,250) and 40 days have elapsed since the death of the decedent, the successor of the decedent to an interest in a particular item of property that is real property, without procuring letters of administration or awaiting the probate of the will, may file a petition in the superior court of the county in which the estate of the decedent may be administered requesting a court order determining that the petitioner has succeeded to that real property. A petition under this chapter may include an additional request that the court make an order determining that the petitioner has succeeded to personal property described in the petition." (Probate Code, § 13151.)

If a decedent dies leaving real property in this state and the gross value of the decedent's real and personal property in this state does not exceed \$166,250, excluding the value of the property described in Probate Code, § 13050, and 40 days have elapsed since the death of the decedent, the successor of the decedent to an interest in a particular item of property that is real property may petition the court of the county in which the estate may be administered to determine that the petitioner has succeeded to that real property. The petition may also include an additional request that the court order that the petitioner has succeeded to the personal property described in the petition. (Probate Code, § 13151.) Such a petition may only be used where either the decedent's personal representative consents in writing to use of this procedure or where no proceeding is being or has been conducted in this state for administration of the decedent's estate. (Probate Code, § 13150.)

“(c) If the petitioner bases the petitioner's claim to the described property upon the will of the decedent, a copy of the will shall be attached to the petition.” (Probate Code, § 13152(c).)

Attached to the petition must be an Inventory and Appraisal prepared by a probate referee and the petitioner may appraise the assets which a personal representative could appraise under Probate Code, § 8901. (Probate Code, § 13152(b).)

An inventory and appraisal was filed on October 27, 2021, which appraises the interest in the property as being worth \$65,000.

““Successor of the decedent” means: ¶ (a) If the decedent died leaving a will, the sole beneficiary or all of the beneficiaries who succeeded to a particular item of property of the decedent under the decedent's will. For the purposes of this part, a trust is a beneficiary under the decedent's will if the trust succeeds to the particular item of property under the decedent's will. ¶ (b) If the decedent died without a will, the sole person or all of the persons who succeeded to the particular item of property of the decedent under Sections 6401 and 6402 or,

if the law of a sister state or foreign nation governs succession to the particular item of property, under the law of the sister state or foreign nation.” (Probate Code, § 13006.)

There is no certified copy of the grant deed attached to the petition as evidence of decedent’s ownership interest.

There is no authenticated copy of the Trust instrument attached to the verified petition to establish that petitioner is the sole remainder beneficiary and/or successor trustee of the Linda L. Lee Droste Living Trust. Therefore, there is no evidence before the court establishing petitioner’s claim to the property as the sole Trust beneficiary and/or successor trustee.

In addition, there is no indication that the original pour-over will was lodged with the court and no copy of the will is attached to the petition.

In fact, since Linda Droste allegedly survived the decedent for over five years, provided the estate of Linda Droste held assets outside the Trust estate that does not exceed \$166,250, the successor to Mildred Droste’s 50% interest in the property is the successor trustee of the Trust and not the purported remainder beneficiary. The property would have to be first claimed by the Trust and then distributed by the trustee according to the distributive provisions of the Trust instrument. If proven by a certified recorded grant deed, the other 50% interest in the property is purportedly owned by the Trust and would pass by the Trust’s distributive provisions.

Absent correction of the above-cited deficiencies, the court is inclined to deny the petition without prejudice

TENTATIVE RULING # 11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 3, 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.eldorado.courts.ca.gov/online-services/telephonic-appearances.

12. ESTATE OF MILDRED DROSTE P-20210193**Petition to Determine Succession to Real Property.**

Petitioner claims that Linda Droste, as the sole next of kin/intestate heir of decedent Mildred Droste, succeeded to a 50% interest in certain real property after Mildred Droste passed away, which was owned by decedent Mildred Droste as a tenant in common. Petitioner asserts she is the sole "heir in Trust" (beneficiary) of Linda Droste's Trust after trustor Linda Droste passed away. The petition alleges: the gross value of the real and personal property of the decedent in California did not exceed the value of \$166,250 as of the decedent's date of death on February 1, 2016; that record title is held in the names of Mildred Droste as owner of 50% of the real property as a tenant in common and the remaining 50% interest owned by Linda Droste as trustee of the Linda L. Lee Droste Living Trust as a tenant in common; Mildred Droste passed away intestate on February 1, 2016 and Linda Droste survived her as her sole intestate heir, but later passed away on February 12, 2021; and Linda Droste's pour-over will leaves the remainder of her estate to the Trust.

Petitioner seeks a court order determining that Mildred Droste's 50% interest in the subject real property passed to her without need for administration of decedent's estate.

"Exclusive of the property described in Section 13050, if a decedent dies leaving real property in this state and the gross value of the decedent's real and personal property in this state does not exceed one hundred fifty thousand dollars (\$166,250) and 40 days have elapsed since the death of the decedent, the successor of the decedent to an interest in a particular item of property that is real property, without procuring letters of administration or awaiting the probate of the will, may file a petition in the superior court of the county in which the estate of the decedent may be administered requesting a court order determining that the

petitioner has succeeded to that real property. A petition under this chapter may include an additional request that the court make an order determining that the petitioner has succeeded to personal property described in the petition.” (Probate Code, § 13151.)

If a decedent dies leaving real property in this state and the gross value of the decedent’s real and personal property in this state does not exceed \$166,250, excluding the value of the property described in Probate Code, § 13050, and 40 days have elapsed since the death of the decedent, the successor of the decedent to an interest in a particular item of property that is real property may petition the court of the county in which the estate may be administered to determine that the petitioner has succeeded to that real property. The petition may also include an additional request that the court order that the petitioner has succeeded to the personal property described in the petition. (Probate Code, § 13151.) Such a petition may only be used where either the decedent’s personal representative consents in writing to use of this procedure or where no proceeding is being or has been conducted in this state for administration of the decedent’s estate. (Probate Code, § 13150.)

Attached to the petition must be an Inventory and Appraisal prepared by a probate referee and the petitioner may appraise the assets which a personal representative could appraise under Probate Code, § 8901. (Probate Code, § 13152(b).)

An inventory and appraisal was filed on October 27, 2021, which appraises the interest in the property as being worth \$65,000.

“Successor of the decedent” means: ¶ (a) If the decedent died leaving a will, the sole beneficiary or all of the beneficiaries who succeeded to a particular item of property of the decedent under the decedent’s will. For the purposes of this part, a trust is a beneficiary under the decedent’s will if the trust succeeds to the particular item of property under the decedent’s will. ¶ (b) If the decedent died without a will, the sole person or all of the persons who

succeeded to the particular item of property of the decedent under Sections 6401 and 6402 or, if the law of a sister state or foreign nation governs succession to the particular item of property, under the law of the sister state or foreign nation.” (Probate Code, § 13006.)

There is no certified copy of the grant deed attached to the petition as evidence of decedent’s ownership interest.

There is no authenticated copy of the Trust instrument attached to the verified petition to establish that petitioner is the sole remainder beneficiary of the Linda L. Lee Droste Living Trust. Therefore, there is no evidence before the court establishing petitioner’s claim to the property as the sole Trust beneficiary.

In addition, there is no indication that the original pour-over will was lodged with the court and no copy of the will is attached to the petition. Therefore, there is no evidence before the court to establish that the 50% interest in the property owned by decedent Mildred Droste passed to the Trust.

In fact, since Linda Droste allegedly survived the decedent for over five years, the successor to Mildred Droste’s 50% interest in the property is the successor trustee of the Trust and not the purported remainder beneficiary. The property would have to be first claimed by the Trust and then distributed by the trustee according to the distributive provisions of the Trust instrument. If proven by a certified recorded grant deed, the other 50% interest in the property is purportedly owned by the Trust and would pass by the Trust’s distributive provisions.

The court is inclined to deny the petition without prejudice.

TENTATIVE RULING # 12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 3, 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.eldorado.courts.ca.gov/online-services/telephonic-appearances.

13. MATTER OF THE LONG FAMILY TRUST PP-20210168**Amended Petition to Confirm Beneficiaries of Trust and Designation of Trustee.**

The verified petition alleges: the Long Family Trust was created by the five children of Violet Long after certain land was conveyed to them; the five children conveyed the subject real property to Roger Long and Scott Long as trustees of the Trust; no family member has a copy of the Trust instrument; the co-trustees/co-settlors and other settlors passed away over the years; the land is unimproved and property taxes are kept current by family members; and the majority of the Long family members/beneficiaries have executed nominations of Robyn Huguelet and Phillip Brucker to be co-trustees of the Trust; the five original children who conveyed the subject real property to the Trust each had a 20% interest in the Trust; Exhibit E sets forth a chart of the heirs of these five persons and their respective shares; and three persons have transferred their shares, with the shares of Lynn Kosterman transferred to Robyn Huguelet and Melody Domingue's and Margaret Long's shares transferred to Rose Niersheimer.

Petitioner requests that the court appoint Robyn Huguelet and Phillip Brucker as co-trustees of the Trust; determine that Eric Emal has a 20% share of the Trust, Robyn Huguelet has a 20% share of the Trust, Phillip Brucker has 1/3 of a 20% share of the Trust, Keith Brucker has 1/3 of a 20% share of the Trust, Debbie Allan has 1/3 of a 20% share of the Trust, Ronnell Larsen has a 5% share of the Trust, Mark Long has a 5% share of the Trust, and Rose Niersheimer has a 30% share of the Trust; and to instruct the co-trustees to convey title to the real property from the Long Family Trust to the above named beneficiaries in their respective percentages.

“There is a vacancy in the office of trustee in any of the following circumstances: * * * The trustee dies...” (Probate Code, § 15643(d).)

“If the trust has no trustee or if the trust instrument requires a vacancy in the office of a cotrustee to be filled, the vacancy shall be filled as provided in this section.” (Probate Code, § 15660(a).)

“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.” (Probate Code, § 15660(d).)

“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: ¶ * * * (10) Appointing or removing a trustee.” (Probate Code, § 17200(b)(10).)

“Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes: ¶ * * * (4) Ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument.” (Probate Code, § 17200(b)(4).)

“Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes: ¶ * * * (6) Instructing the trustee...” (Probate Code, § 17200(b)(6).)

“(a) 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. ¶ (b) 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. ¶ (c) If a person to whom notice otherwise would be given has been deceased for at least 40 days, and no personal representative has been appointed for the estate of that person, and the deceased person's right, title, or interest has not passed to any other person pursuant to Division 8 (commencing with Section 13000) or otherwise, notice may instead be given to the following persons: ¶ (1) Each heir and devisee of the decedent, and all persons named as executors of the will of the decedent, so far as known to the petitioner. ¶ (2) Each person serving as guardian or conservator of the decedent at the time of the decedent's death, so far as known to the petitioner.” (Probate Code, § 17203.)

The proof of service filed on August 9, 2021, which is the same date the amended petition was filed, declares that the notice of hearing and petition were served by mail on the interested persons of August 5, 2021. .

Absent opposition or objections, it appears appropriate to appoint Robyn Huguelet and Philip Brucker to be co-trustees of the Trust, determine that the listed beneficiaries have the

stated shares of the Trust, and to order the Trust be terminated by distribution of the stated shares of the subject real property to the beneficiaries.

However, the issue of the amount of the bond must be resolved.

“A trustee is not required to give a bond to secure performance of the trustee's duties, unless any of the following circumstances occurs: ¶ (1) A bond is required by the trust instrument. ¶ (2) Notwithstanding a waiver of a bond in the trust instrument, a bond is found by the court to be necessary to protect the interests of beneficiaries. ¶ (3) An individual who is not named as a trustee in the trust instrument is appointed as a trustee by the court.” (Probate Code, § 15602(a).)

“Notwithstanding paragraphs (1) and (3) of subdivision (a), the court may excuse a requirement of a bond, reduce or increase the amount of a bond, release a surety, or permit the substitution of another bond with the same or different sureties. The court may not, however, excuse the requirement of a bond for an individual described in paragraph (3) of subdivision (a), except under compelling circumstances. For the purposes of this section, a request by all the adult beneficiaries of a trust that bond be waived for an individual described in paragraph (3) of subdivision (a) for their trust is deemed to constitute a compelling circumstance.” (Emphasis added.) (Probate Code, § 15602(b).)

Nearly all of the beneficiaries appear to have executed waivers of the bond requirement in their executed nomination and confirmation of beneficiary status forms. Beneficiary Keith Brucker essentially stated on his form that he wanted to put the appointment of the successor co-trustee and bond to a vote. (See Petition Exhibit D.)

In order to set a bond amount, appearances are required to provide the court with information as to the value of the assets of the Trust estate.

TENTATIVE RULING # 13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 3, 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.eldorado.courts.ca.gov/online-services/telephonic-appearances.

14. MATTER OF THE SADDLE ROAD TRUST PP-20210130

Petition to Suspend Trustee Powers, Remove Trustee, Compel Accounting, Deny Right to Pay Trustee Attorney Fees from Trust Assets, Surcharge Trustee and Order Repayment of Estate Property Wrongfully Taken by Trustee, Appoint Successor Trustee, and to Order Grantor/Trustee Garden to Pay Attorney Fees and Costs Incurred by Petitioners.

The verified petition alleges: petitioner is a beneficiary of the Trust with a 2/3 interest in the Trust; and grantor/trustee/beneficiary Garden has engaged in various alleged breaches of trust justifying the requested orders.

“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: ¶
* * * (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.)

Proceedings concerning the internal affairs of a trust include, among other things, “(7) Compelling the trustee to do any of the following: ¶ (A) Provide a copy of the terms of the trust. ¶ (B) Provide information about the trust under Section 16061 if the trustee has failed to provide the requested information within 60 days after the beneficiary's reasonable written request, and the beneficiary has not received the requested information from the trustee within the six months preceding the request. ¶ (C) Account to the beneficiary, subject to the provisions of Section 16064, if the trustee has failed to submit a requested account within 60

days after written request of the beneficiary and no account has been made within six months preceding the request.” (Probate Code, § 17200(b)(7).)

Proceedings concerning the internal affairs of the trust include, but are not limited to, “Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers.” (Probate Code, § 17200(b)(5).)

“The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration.” (Probate Code, § 16060.) “[T]he general duty provided in this section is ordinarily satisfied by compliance with Sections 16061 and 16062 unless there are special circumstances requiring particular information to be reported to beneficiaries.” (Law Review Commission Comment to 1990 Enactment of Probate Code, § 16060.) “Except as provided in Section 16064, on reasonable request by a beneficiary, the trustee shall provide the beneficiary with a report of information about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiary’s interest, including the terms of the trust.” (Probate Code, § 16061.)

“Trustees are * * * under an obligation to render to beneficiaries a full account of all their dealings with the trust property, and where there has been a negligent failure to keep true accounts all presumptions are against them upon a settlement.” (*Estate of McCabe* (1950) 98 Cal.App.2d 503, 505, 220 P.2d 614, 616; see also, *Purdy v. Johnson* (1917) 176 Cal. 521, 527, 163 P. 893.)” (Blackmon v. Hale (1970) 1 Cal.3d 548, 560.)

“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).)

On July 21, 2021 declarations of unsuccessful due diligent attempts to personally serve the respondent trustee/beneficiary were filed. There is no proof of service of notice of the hearing and a copy of the petition on respondent in the court’s file.

TENTATIVE RULING # 14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 3, 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.eldorado.courts.ca.gov/online-services/telephonic-appearances.

15. SPECIAL NEEDS TRUST OF RAYLEENA SOSTRE PP-20110058**Amended Report of 3rd and 4th Account.**

The trustee filed the 3rd Account on November 27, 2020 and filed the 4th Account on January 25, 2021. On March 3, 2021 the court entered an order on the petition to remove the trustee. The court ordered the trustee suspended; that private fiduciary Mia Ehsani is appointed interim trustee of both Special Needs Trust; and that the interim trustee was to file and serve 3rd and 4th accountings of the Special Needs Trust.

The court, therefore, is ruling on the interim trustee's account and report, is not ruling on the suspended trustee's account and report, and is not making any finding regarding whether the suspended trustee's conduct in administering the Trust was appropriate.

Chrystal Wilson-Sostre filed a response raising several issues with the 3rd and 4th Accounts and requested that an amended accounting be filed. At the hearing on August 11, 2021 the interim trustee's counsel stated that an amended accounting for the time that the interim trustee was interim trustee would be filed. The hearing was continued to November 3, 2021.

There was no amended accounting in the court's file at the time this ruling was prepared.

TENTATIVE RULING # 16: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 3, 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.eldorado.courts.ca.gov/online-services/telephonic-appearances.

16. SPECIAL NEEDS TRUST OF RIVER SOSTRE PP-20110057**Amended Report of 3rd and 4th Account.**

The trustee filed the 3rd Account on November 27, 2020 and filed the 4th Account on January 25, 2021. On March 3, 2021 the court entered an order on the petition to remove the trustee. The court ordered the trustee suspended; that private fiduciary Mia Ehsani is appointed interim trustee of both Special Needs Trusts; and that the interim trustee was to file and serve 3rd and 4th accountings of the Special Needs Trust.

The court, therefore, is ruling on the interim trustee's account and report, is not ruling on the suspended trustee's account and report, and is not making any finding regarding whether the suspended trustee's conduct in administering the Trust was appropriate.

Chrystal Wilson-Sostre filed a response raising several issues with the 3rd and 4th Accounts and requested that an amended accounting be filed. At the hearing on August 11, 2021 the interim trustee's counsel stated that an amended accounting for the time that the interim trustee was interim trustee would be filed. The hearing was continued to November 3, 2021.

There was no amended accounting in the court's file at the time this ruling was prepared.

TENTATIVE RULING # 16: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 3, 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.eldorado.courts.ca.gov/online-services/telephonic-appearances.

17. MATTER OF THE CAROL CALZA TRUST PP-20210082**Petition to Remove The Trustee and Compel Trustee for an Accounting of the Trust.**

The petitioning beneficiary of the Trust seeks issuance of the following orders: removal of the trustee; appointing himself as successor trustee to serve without a bond; ordering the trustee to provide an accounting within 60 days; and ordering the Trust to reimburse the petitioner the amount of \$7,930 for attorney fees purportedly incurred in this action. The verified petition alleges: the trustee engaged in certain misconduct that constitutes a breach of duty of impartiality; caused a conflict of interest by using the Trust's real property for her own benefit to operate her dog breeding business to the detriment of the Trust; the trustee has delayed the sale of the Trust's real property as the settlor passed away in November 2019; petitioner has not received any distribution from the Trust; and despite demand for an accounting, the trustee refused to provide one on the ground that Article X on page seven of the Trust instrument waives the accounting requirement.

The waiver of accounting requirement states: "The Trustee shall not be required to make any accounting of the trust to the Settlor or the beneficiaries of the trust, except as required by Section 17200 of the California Probate Code." (Emphasis added.) (Petition, Exhibit A – Trust Instrument, Section X.)

As cited later in this ruling, pursuant to Section 17200(b)(7) a trustee can be compelled by court order to account where the trustee has failed to provide an annual accounting after the remainder beneficiaries became entitled to current distributions from the Trust and to submit a requested account within 60 days after written request of the beneficiary and no account has been made within six months preceding the request. Section X on its face does not waive the accounting requirement where the beneficiary requests an accounting.

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 a trust include, among other things, “(7) Compelling the trustee to do any of the following: ¶ (A) Provide a copy of the terms of the trust. ¶ (B) Provide information about the trust under Section 16061 if the trustee has failed to provide the requested information within 60 days after the beneficiary's reasonable written request, and the beneficiary has not received the requested information from the trustee within the six months preceding the request. ¶ (C) Account to the beneficiary, subject to the provisions of Section 16064, if the trustee has failed to submit a requested account within 60 days after written request of the beneficiary and no account has been made within six months preceding the request.” (Probate Code, § 17200(b)(7).)

“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).)

“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).)

The proof of service declares that notice of the hearing and a copy of the petition were served by mail on the trustee/beneficiary and her counsel on April 23, 2021.

“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 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.)

“The violation by a trustee of any duty owed to the beneficiaries of the trust constitutes a breach of trust. (Rest.2d Trusts, § 201, pp. 442–444.) Such duties include the duty of loyalty, the duty to avoid conflicts of interest, the duty to preserve trust property, the duty to make trust property productive, the duty to dispose of improper investments, and the duty to report and account. (*Pierce v. Lyman*, *supra*, 1 Cal.App.4th at pp. 1102–1103, 3 Cal.Rptr.2d 236; Prob.Code, §§ 16002–16006, 16060; Rest.2d Trusts, §§ 175–176, 181, 230–231.)” (City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc. (1998) 68 Cal.App.4th 445, 462.)

“The remedies of a beneficiary against the trustee are exclusively in equity.” (Probate Code, § 16421.)

“Except as otherwise provided in this section and in Section 16064, the trustee shall account at least annually, at the termination of the trust, and upon a change of trustee, to each beneficiary to whom income or principal is required or authorized in the trustee's discretion to be currently distributed.” (Emphasis added.) (Probate Code, § 16062(a).)

“The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration.” (Probate Code, § 16060.) “[T]he general duty provided in this section is ordinarily satisfied by compliance with Sections 16061 and 16062 unless there are special circumstances requiring particular information to be reported to beneficiaries.” (Law Review Commission Comment to 1990 Enactment of Probate Code, § 16060.) “Except as provided in Section 16064, on reasonable request by a beneficiary, the trustee shall provide the beneficiary with a report of information about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiary's interest, including the terms of the trust.” (Probate Code, § 16061.)

“Trustees are * * * under an obligation to render to beneficiaries a full account of all their dealings with the trust property, and where there has been a negligent failure to keep true accounts all presumptions are against them upon a settlement.” (*Estate of McCabe* (1950) 98 Cal.App.2d 503, 505, 220 P.2d 614, 616; see also, *Purdy v. Johnson* (1917) 176 Cal. 521, 527, 163 P. 893.)” (Blackmon v. Hale (1970) 1 Cal.3d 548, 560.)

The respondent trustee filed an answer and response to the petition on June 25, 2021.

Both sides presented argument at the hearing on June 30, 2021. The court continued the hearing on the petition and objections to November 3, 2021.

TENTATIVE RUIING # 17: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, NOVEMBER 3, 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.eldorado.courts.ca.gov/online-services/telephonic-appearances.