

1. ESTATE OF STEWART PP-20190125

Review Hearing Re: Status of Administration.

TENTATIVE RULING # 1: THE ORDER OF FINAL DISCHARGE HAVING BEEN ENTERED
ON AUGUST 26, 2021, THIS MATTER IS DROPPED FROM THE CALENDAR.

2. ESTATE OF O'SULLIVAN PP-20200146

Review Hearing Re: Inventory and Appraisal.

TENTATIVE RULING # 2: THE FINAL INVENTORY AND APPRAISAL HAVING BEEN
FILED ON OCTOBER 5, 2021, THIS MATTER IS DROPPED FROM THE CALENDAR.

3. ESTATE OF MATTHEWS PP-20200194

Review Hearing Re: Inventory and Appraisal.

The purported final inventory and appraisal filed on May 20, 2021 is defective. The personal representative improperly appraised Attachment 2 property, such as the real property and other personal property, including vehicles and miscellaneous household furnishings. The appointed probate referee, Linda Molinari, must appraise Attachment 2 property.

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.)

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 1, 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.

4. ESTATE OF COUNTRYMAN PP-20200079

Review Hearing Re: Status of Administration.

TENTATIVE RULING # 4: THE ORDER OF FINAL DISCHARGE HAVING BEEN ENTERED
ON SEPTEMBER 28, 2021, THIS MATTER IS DROPPED FROM THE CALENDAR.

5. ESTATE OF DULLER PP-20210111

Petition to Administer Estate.

Petitioner attached a copy of an executed last will and testament of decedent that was lodged with the court on February 3, 2020. Petitioner Josef Duller petitions for the court to enter an order finding the entire will is void and invalid as one witness to the will is the spouse of the primarily named beneficiary of the will; and requests that he be appointed personal representative of the estate as an intestate estate.

Petitioner essentially seeks to contest the will by seeking appointment as an intestate estate personal representative.

The proof of service declares that on June 18, 2021 the interested persons were served notice of the hearing and a copy of the petition by mail.

The will does not name petitioner as executor and instead names decedent's daughter Gabriele McInnis as the sole nominated executor of the will. (Verified Petition, Attachment 3f(2) – Last Will and Testament of Josef G. Duller, Article IV.)

The lack of any witnesses to the will does not mandate the court to determine the will is ineffective, void, or invalid. Evidence of the intent of the testator controls, even if that intent is shown only by the content of the will executed by the testator.

"Except as provided in this part, a will shall be in writing and satisfy the requirements of this section." (Probate Code, § 6110(a).) "The will shall be signed by one of the following: ¶(1) By the testator. ¶(2) In the testator's name by some other person in the testator's presence and by the testator's direction. ¶(3) By a conservator pursuant to a court order to make a will under Section 2580." (Probate Code, § 6110(b).) "(c)(1) Except as provided in paragraph (2), the will shall be witnessed by being signed, during the testator's lifetime, by at least two persons each

of whom (A) being present at the same time, witnessed either the signing of the will or the testator's acknowledgment of the signature or of the will and (B) understand that the instrument they sign is the testator's will. ¶ (2) If a will was not executed in compliance with paragraph (1), the will shall be treated as if it was executed in compliance with that paragraph if the proponent of the will establishes by clear and convincing evidence that, at the time the testator signed the will, the testator intended the will to constitute the testator's will." (Emphasis added.) (Probate Code, § 6110(c).)

The appellate court in In re Estate of Stoker (2011) 193 Cal.App.4th 236 affirmed the trial court's admission of a will to probate that was executed by the testator, but that was not executed by two witnesses. The appellate court stated the following with regards to the construction of Probate Code, § 6110(c)(2): "The broad and remedial goal of this provision is to give preference to the testator's intent instead of invalidating wills because of procedural deficiencies or mistakes. Including the 2005 will within the purview of this statute is consistent with that purpose." (In re Estate of Stoker (2011) 193 Cal.App.4th 236, 242.) The appellate court later stated with respect to substantial evidence supporting the trial court's finding that there was clear and convincing evidence that at the time the testator signed the will, the testator intended the will to constitute the testator's will: "Appellants contend there is no evidence to show that the 2005 document was intended to be decedent's will. They claim it does not contain "testamentary language," does not use the word will or make reference to death. [Footnote omitted.] ¶ The document is certainly not a model will. But "[n]o particular words are necessary to show a testamentary intent" as long as the record demonstrates that the decedent intended the document to be his or her last will and testament. (In re Wunderle's Estate (1947) 30 Cal.2d 274, 280, 181 P.2d 874.) ¶ Here decedent's testamentary intent is evident. The document provides that all of decedent's property will go to his children—the

respondents, that the 1997 trust is revoked, that Gularte will receive “nothing,” and that his children will have power of attorney “over everything.” ¶ Moreover, even if the document is ambiguous, the trial court properly admitted extrinsic evidence. (*In re Torregano’s Estate* (1960) 54 Cal.2d 234, 246, 5 Cal.Rptr. 137, 352 P.2d 505.) That evidence confirmed decedent’s testamentary intent. Meier testified that decedent told her the document was “my last will and testament,” and “[t]hese are my wishes.” Johns testified that decedent told him that the will represented “his final wishes.” (Emphasis added.) (*In re Estate of Stoker* (2011) 193 Cal.App.4th 236, 244.)

Gabriele McInnis appeared at the hearing on August 11, 2021 to object to the petition. The parties stated they are going to mediation and if there is no resolution, Ms. McInnis would file a competing petition.

The hearing was continued to December 1, 2021. The court has not received any word on the results of mediation and there is no competing petition in the courts file.

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 1, 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.

6. ESTATE OF FLEMING P-20210166

Spousal Property Petition.

TENTATIVE RULING # 6: ABSENT OPPOSITION, THE PETITION IS GRANTED.

7. ESTATE OF HENNICK PP-20210098

Review Hearing Re: Inventory and Appraisal.

Letters of Administration were issued on July 7, 2021. There is no Final Inventory and Appraisal in the court's file.

TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 1, 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.

8. ESTATE OF DESIN PP-20190211

Review Hearing Re: Status of Administration.

The personal representative filed a petition for final distribution on waiver of account, which was set for hearing on June 30, 2021.

The beneficiaries waived the accounting requirement.

The assets of the estate were valued at \$29,552.58. The personal representative seeks reimbursement for legal expenses of \$4,378 in administering the estate. The petition does not describe the legal services provided to the personal representative and the claim does not break the request down to ordinary and extraordinary attorney fees. The statutory ordinary fees paid to an attorney in a probate administration where the total assets of the estate are appraised as \$29,552.58 is \$1,182.10, not \$4,378. “Subject to the provisions of this part, for ordinary services the attorney for the personal representative shall receive compensation based on the value of the estate accounted for by the personal representative, as follows: ¶ (1) Four percent on the first one hundred thousand dollars (\$100,000)....” (Probate Code, § 10810(a)(1).) Absent further explanation, the court can only allow reimbursement of \$1,182.10 for the personal representative’s ordinary attorney fees incurred during administration of the estate.

There is no proof of service of notice of the hearing and a copy of the petition on will beneficiary Lucas Desin. The court can not rule on the petition until it has adequate proof of service of notice of the hearing and a copy of the petition on Lucas Desin in the court’s file.

At the hearing on June 30, 2021 the personal representative was directed to amend the petition to explain the legal fees and the hearing continued to September 29, 2021. The personal representative failed to appear on September 29, 2021. The court continued the

review hearing re: status of administration to December 1, 2021 and ordered the personal representative to appear and show cause why she should not be sanctioned for failure to appear. The September 29, 2021 minute order was served on the personal representative by mail to her address of record on October 1, 2021.

There is no amendment to the petition and no explanation of the fees sought. In addition, there is an unresolved issue of the lack of proof of service on will beneficiary Lucas Desin in the court's file.

TENTATIVE RULING # 8: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 1, 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 JAMES-WEBSTER PP-20210108

Review Hearing Re: Inventory and Appraisal.

TENTATIVE RULING # 9: THE FINAL INVENTORY AND APPRAISAL HAVING BEEN
FILED ON OCTOBER 22, 2021, THIS MATTER IS DROPPED FROM THE CALENDAR.

10. ESTATE OF ROUTH PP-20200234

1st and Final Account and Report.

TENTATIVE RULING # 10: THIS MATTER IS CONTINUED TO 8:30 A.M. ON WEDNESDAY,
FEBRUARY 2, 2022 IN DEPARTMENT EIGHT.

11. ESTATE OF FINELY PP-20200100

1st and Final Account and Report.

TENTATIVE RULING # 11: THIS MATTER IS CONTINUED TO 8:30 A.M. ON WEDNESDAY,
FEBRUARY 2, 2022 IN DEPARTMENT EIGHT.

12. ESTATE OF REX WIGHT PP-20190232

Review Hearing Re: Status of Administration.

Letters of Administration With Will Annexed were issued on July 8, 2020. The Final Inventory and Appraisal was filed on March 17, 2020. There is no Final Account and Request for Order of Final Distribution in the court's file.

TENTATIVE RULING # 12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 1, 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. ESTATE OF MILLER PP-20200135

(1) Review Hearing Re: Status of Administration.

(2) OSC Re: Sanctions for Failure to Appear.

The order of final distribution was entered on June 16, 2021. There is no receipt of distribution in the court's file and no ex parte Petition for Final Discharge (Judicial Council Form DE-295.) in the court's file.

The personal representative failed to appear at the hearing on September 29, 2021. The court continued the hearing to December 1, 2021 and ordered the personal representative to appear on December 1, 2021 and show cause why she should not be sanctioned for failure to appear. The September 29, 2021 minute order was served by mail to the personal representative's counsel on October 1, 2021.

TENTATIVE RULING # 13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 1, 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. ESTATE OF SHERRY WIGHT PP-20190231

Review Hearing Re: Status of Administration.

Letters of Administration were issued on July 8, 2020. The Final Inventory and Appraisal was filed on March 17, 2020. There is no Final Account and Request for Order of Final Distribution in the court's file.

TENTATIVE RULING # 14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 1, 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. ESTATE OF RYDER PP-20210112

Review Hearing Re: Inventory and Appraisal.

Letters of Administration were issued on August 12, 2021. There is no Final Inventory and Appraisal in the court's file.

TENTATIVE RULING # 15: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 1, 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. ESTATE OF KNOLL PP-20200121

Review Hearing Re: Status of Administration.

Letters Testamentary were issued on December 17, 2021. The Final Inventory and Appraisal was filed on June 14, 2021. There is no Final Account and Request for Order of Final Distribution in the court's file.

TENTATIVE RULING # 16: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 1, 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. ESTATE OF STACK PP-20210076

Review Hearing Re: Inventory and Appraisal.

TENTATIVE RULING # 17: THE FINAL INVENTORY AND APPRAISAL HAVING BEEN
FILED ON NOVEMBER 17 2021, THIS MATTER IS DROPPED FROM THE CALENDAR.

18. MATTER OF MITCHELL AND HSU PP-20210214

Petition for Order Establishing Fact of Marriage.

Petitioners seek a court order determining that their marriage that took place on February 20, 2009 in Taiwan is recognized as fact by El Dorado County and the State of California. The petition states that petitioner Mitchell currently resides in Rescue, California.

“A verified petition may be filed by any beneficially interested person with the clerk of the superior court in and for (1) the county in which the birth, death, or marriage is alleged to have occurred, (2) the county of residence of the person whose birth or marriage it is sought to establish, or (3) the county in which the person was domiciled at the date of death for an order to judicially establish the fact of, and the time and place of, a birth, death, or marriage that is not registered or for which a certified copy is not obtainable.” (Health and Safety Code, § 103450(a).)

“The petition shall be verified and shall contain all the facts necessary to enable the court to determine the fact of and the time and place of the birth, death, or marriage upon the proofs adduced in behalf of the petitioner at the hearing.” (Health and Safety Code, § 103455.) The petitioner must submit one of the following mandatory verified petitions: Judicial Council Forms BDM-001 (Petition to Establish Fact, Time and Place of Birth); BDM-002 (Petition to Establish Fact Time and Place of Marriage); and BDM-003 (Petition to Establish Fact Time and Place of Death). The verified petitions should be accompanied by the mandatory form declarations in support of each petition, which are: Judicial Council Forms BDM-001A (Declaration in Support of Petition to Establish Fact, Time, and Place of Birth.); BDM 002A (Declaration in Support of Petition to Establish Fact, Time, and Place of Marriage); and BDM-003A (Declaration in Support of Petition to Establish Fact, Time, and Place of Death.)

The mandatory form declaration (Judicial Council Form BDM 002A Declaration in Support of Petition to Establish Fact, Time, and Place of Marriage) executed by petitioner's parent declares: Lynwood Mitchell was physically present at the wedding that took place between Daniel Mitchell and Wen-Ching Hsu on February 20, 2009 in Kaohsiung, Taiwan; and witnessed the legal certification of their marriage and their formal wedding ceremony.

"Upon the filing of the petition a hearing shall be fixed by the clerk and at the convenience of the court set at a time not less than five nor more than 10 days after the filing of the petition. The hearing may be held in chambers. The court, for good cause, may continue the hearing beyond the 10-day period." (Health and Safety Code, § 103465.)

"If, upon the hearing, the allegations of the petition are established to the satisfaction of the court, the court may make an order determining that the birth, death, or marriage did in fact occur at the time and place shown by the proofs adduced at the hearing." (Health and Safety Code, § 103475.)

TENTATIVE RULING # 18: THE PETITION IS GRANTED.

19. MATTER OF THALHOFER PP-20210207**Petition for Order Authorizing Transfer and Transmutation of Community Property.**

Petitioner seeks a court order to authorize petitioner on his own behalf and on behalf of his spouse, who lacks capacity for the proposed transaction, to transfer all interest in the community property residence to the petitioner and to transmute such community property to petitioner's sole and separate property.

The verified petition alleges: petitioner Dale Thalhofer and respondent Cynthia Thalhofer have been married for 20 years; respondent is 72 years old and resides with her husband in their home; petitioner is also 72 years old; respondent lacks the capacity to engage in the proposed transaction as she suffers from advanced dementia, having first been diagnosed with dementia in 2015, she lacks the cognitive capacity to manage her financial resources, to engage in financial transactions, to make financial decisions, to make informed legal consent to health care, and she is unable to understand and appreciate the consequences of her actions with regard to the proposed transaction or to resist fraud or undue influence; the condition worsened over the years and today she requires assistance with every aspect of her life; petitioner has provided home care services to his spouse every day for the past six years, which allowed respondent to avoid placement in a nursing home for at least three years; due to petitioner's age and health, respondent's condition, and foreseeable costs for respondent's care, petitioner may need to raise funds by selling their residence in order to move both of them to an assisted living community; it is necessary for him to have title to the real property as his sole and separate property in order be able to execute all documents necessary to sell or otherwise convey the home in order to accomplish such a sale in order to pay for placement in a continuing care facility for the mutual benefit of both petitioner and respondent; petitioner

also anticipates he will have to apply for Medi-Cal to seek long term nursing benefits for the respondent, which will necessitate the conveyance of the property away from respondent; the subject real property residence is the community property of petitioner and respondent and the total value is \$450,000, with each of them having a share in the amount of \$225,000 in the property; the transfer and transmutation will also serve as a gift to petitioner, which respondent would make on her own if she had the capacity to do so to help provide for her husband's support and care and to enhance his ability to engage in long term care planning for both of them; the transfer and transmutation will not prejudice respondent's prospective eligibility for Medi-Cal benefits as the home is an exempt asset, transfers of the home to petitioner is an exempt transfer, and, therefore, would have no bearing on respondent's Medi-Cal eligibility; the couple's total gross income is \$4,703 per month; no bond should be required as it would serve no useful purpose, since the transaction benefits the community estate for the mutual support of petitioner and respondent; and respondent will not attend the hearing.

A proceeding to obtain court authorization for a proposed transaction may be brought if one of the spouses is alleged to lack legal capacity for the proposed transaction, whether or not that spouse has a conservator and if the other spouse either has legal capacity for the proposed transaction or has a conservator. (Probate Code, § 3101.) If the petitioning spouse has legal capacity, the appointment of a conservator for the spouse that lacks legal capacity is not required. (Probate Code, § 3113.)

"The petition shall set forth all of the following information: ¶ (a) The name, age, and residence of each spouse. (b) If one or both spouses is alleged to lack legal capacity for the proposed transaction, a statement that the spouse has a conservator or a statement of the facts upon which the allegation is based. ¶ (c) If there is a conservator of a spouse, the name and address of the conservator, the county in which the conservatorship proceeding is

pending, and the court number of the proceeding. ¶ (d) If a spouse alleged to lack legal capacity for the proposed transaction is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services, the name and address of the institution. ¶ (e) The names and addresses of all of the following persons: ¶ (1) Relatives within the second degree of each spouse alleged to lack legal capacity for the proposed transaction. ¶ (2) If the petition is to provide gifts or otherwise affect estate planning of the spouse who is alleged to lack capacity, as would be properly the subject of a petition under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 (substituted judgment) in the case of a conservatorship, the names and addresses of the persons identified in Section 2581. ¶ (f) A sufficient description of the property that is the subject of the proposed transaction. ¶ (g) An allegation that the property is community property, and, if the proposed transaction involves property in which a spouse also has a separate property interest, an allegation of good cause to include that separate property in the transaction. ¶ (h) The estimated value of the property. ¶ (i) The terms and conditions of the proposed transaction, including the names of all parties thereto. ¶ (j) The relief requested.” (Probate Code, § 3121.)

“If the proceeding is brought for a court order authorizing a proposed transaction, the petition shall set forth, in addition to the information required by Section 3121, all of the following: ¶ (a) An allegation that one of the spouses has a conservator or facts establishing lack of legal capacity of the spouse for the proposed transaction. ¶ (b) An allegation that the other spouse has legal capacity for the proposed transaction or has a conservator. ¶ (c) An allegation that each spouse either: (1) joins in or consents to the proposed transaction, (2) has a conservator, or (3) is substantially unable to manage his or her financial resources or resist fraud or undue influence. ¶ (d) Facts that may be relied upon to show that the authorization

sought is for one or more of the following purposes: ¶ (1) The advantage, benefit, or best interests of the spouses or their estates. ¶ (2) The care and support of either spouse or of such persons as either spouse may be legally obligated to support. ¶ (3) The payment of taxes, interest, or other encumbrances or charges for the protection and preservation of the community property. ¶ (4) The providing of gifts for such purposes, and to such charities, relatives (including one of the spouses), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the spouses." (Probate Code, § 3122.)

"If a spouse alleged to lack legal capacity is not otherwise represented, the court may in its discretion appoint the public guardian, public administrator, or a guardian ad litem to represent the interests of the spouse." (Probate Code, § 3140(b).)

"If a spouse alleged to lack legal capacity is unable to retain legal counsel, upon request of the spouse, the court shall appoint the public defender or private counsel under Section 1471 to represent the spouse and, if such appointment is made, Section 1472 applies." (Probate Code, § 3140(c).)

"Except as provided in subdivision (c), the court may fix a reasonable fee, to be paid out of the proceeds of the transaction or otherwise as the court may direct, for all services rendered by privately engaged counsel, the public guardian, public administrator, or guardian ad litem, and by counsel for such persons." (Probate Code, § 3140(d).)

"The court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel and shall make a determination of the person's ability to pay all or a portion of that sum. The sum may, in the discretion of the court, include compensation for services rendered, and expenses incurred, before the date of the order appointing counsel." (Probate Code, § 1472(a)(1).)

“The court may authorize the proposed transaction if the court determines all of the following: ¶ (1) The property that is the subject of the proposed transaction is community property of the spouses. ¶ (2) One of the spouses then has a conservator or otherwise lacks legal capacity for the proposed transaction. ¶ (3) The other spouse either has legal capacity for the proposed transaction or has a conservator. ¶ (4) Each of the spouses either (i) joins in or consents to the proposed transaction, (ii) has a conservator, or (iii) is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Substantial inability may not be proved by isolated incidents of negligence or improvidence. ¶ (5) The proposed transaction is one that should be authorized under this chapter.” (Probate Code, § 3144(a).) If the proposed transaction is to provide gifts or otherwise affect estate planning of the spouse who is alleged to lack capacity, the court may authorize the proposed transaction only if the transaction is one that the court would authorize pursuant to a substituted judgment petition brought in a conservatorship proceeding. (Probate Code, § 3144(b).) Therefore, the court must apply Probate Code, §§ 2580, et seq., to its determination of the instant petition brought pursuant to the provisions of Probate Code, §§ 3100, et seq.

The court may make an order authorizing such a proposed action only if it determines that the spouse who lacks legal capacity either is not opposed to the proposed action or if opposed, lacks legal capacity for the proposed action; and either the proposed action will have no adverse effect on the estate, or the remainder of the estate will be adequate to provide for the needs of the conservatee and those legally entitled to support from the conservatee. (Probate Code, § 2582.)

“Except as provided in subdivision (b), upon the filing of the petition, the clerk shall issue a citation to each nonpetitioning spouse alleged to lack legal capacity for the proposed transaction, setting forth the time and place of hearing. The citation and a copy of the petition

shall be served upon the spouse at least 15 days before the hearing.” (Probate Code, § 3130(a).)

“Service under this section shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the person to be served is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.” (Probate Code, § 3130(c).)

The mandated citation to the respondent has not been issued and there is no proof of service of a citation on respondent in the court’s file. The court can not reach the merits of the petition absent issuance and service of the citation.

“(c) At least 15 days before the hearing on the petition, the petitioner shall deliver pursuant to Section 1215 a notice of the time and place of the hearing on the petition to those persons required to be named in the petition at the addresses set forth in the petition.” (Probate Code, § 3131(c).)

Paragraph 11 of the petition lists 12 interested persons entitled to notice of this proceeding. There is no proof of service in the court’s file. The court can not reach the merits of the petition absent proof of adequate service on all interested persons.

“If the spouse is not able to attend the hearing because of medical inability, such inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the spouse is an adherent of a religion whose tenets and practices call for reliance upon prayer alone for healing and is under treatment by an accredited practitioner of the religion, by the affidavit of the practitioner.” (Probate Code, § 3141(b).) “Emotional or psychological instability is not good cause for absence of the spouse from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage.” (Probate Code, § 3141(c).)

Petitioner states that the respondent will not attend the hearing without explanation of why she will not attend. Petitioner needs to explain why the respondent will not attend. If medically unable to attend, petitioner will have to establish the inability to attend by the affidavit or certificate of a licensed medical practitioner, or, if the respondent is an adherent of a religion whose tenets and practices call for reliance upon prayer alone for healing and is under treatment by an accredited practitioner of the religion, by the affidavit of the practitioner.

“If a spouse is alleged to lack legal capacity for the proposed transaction and has no conservator, the court, before commencement of the hearing on the merits, shall inform the spouse of all of the following: ¶ (1) A determination of lack of legal capacity for the proposed transaction may result in approval of the proposed transaction. ¶ (2) The spouse has the right to legal counsel of the spouse's own choosing, including the right to have legal counsel appointed by the court if unable to retain legal counsel.” (Probate Code, § 3142(a).) “This section does not apply if the spouse is absent from the hearing and is not required to attend the hearing under the provisions of subdivision (a) of Section 3141 and any showing required by Section 3141 has been made.” (Probate Code, § 3142(b).)

“Unless the court for good cause dispenses with the bond, the court shall require the petitioner to give a bond, in the amount fixed by the court, conditioned on the duty of the petitioner to account for and apply the proceeds of the transaction to be received by the petitioner only as the court may by order direct.” (Probate Code, § 3150(a).) “Unless the court for good cause fixes the amount of the bond in a lesser amount, if given by an admitted surety insurer, the bond shall be in an amount not less than the value of the personal property (including cash and any notes) to be received by the petitioner, as determined by the court.” (Probate Code, § 3150(b).) “If the sureties on the bond are personal sureties, the bond shall be approved by the court and shall be for twice the amount required for a bond given by an

admitted surety insurer.” (Probate Code, § 3150(c).) “Section 2328 is applicable to the bond of the petitioner under this chapter.” (Probate Code, § 3150(d).)

As stated earlier in this ruling, the court can not reach the merits of the petition absent proof of service of a copy of the petition and citation on the respondent non-petitioning spouse and notice of the hearing and a copy of the petition on all other interested persons.

In addition, petitioner needs to explain why the respondent will; not attend and/or provide the required affidavit related to respondent’s not appearing at the hearing.

TENTATIVE RUIING # 19: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 1, 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.

20. MATTER OF THE BAUER FAMILY TRUST PP-20210087**Hearing Re: Results of Mediation.**

The petition alleges: petitioner is co-trustee and beneficiary of the subject Trust; since the death of her father and incapacity of her mother over two years ago Sonja Bauer has acted as co-trustee and refused to provide any information or accounting to the petitioning co-trustee; respondent has refused to cooperate in the most basic tasks of administration of the Trust; and respondent has breached the Trust in various ways.

Petitioner requests the court to remove Sonja Bauer as trustee; compel Sonja Bauer to provide an accounting; provide relief from the alleged breaches of trust; surcharge Sonja Bauer; and order restitution of any attorney fees paid by the litigants from the Trust assets.

The proofs of service declare that Sonja Bauer was personally served the summons and petition, which included notice of the hearing date and time, in Nevada on May 4, 2021; and various persons were served the petition, which included notice of the hearing date and time, by mail on May 7, 2021, with service of an informational copy on Sonny Bauer "to be served".

On July 21, 2021 petitioner filed a list of all interested persons related to the Trust. The court notes that the proof of service does not declare that interested person Michael Bauer was served notice of the hearing and a copy of the petition. This needs to be remedied. The court can not rule on the petition in the absence of proof of adequate notice on all interested parties.

Respondent Sonja Bauer filed a declaration of counsel related to meet and confer efforts concerning the filing of a demurrer to the petition and counsel concluded that they were unable to meaningfully meet and confer such that the June 3, 2021 deadline to file the demurrer was extended 30 days.

“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 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.)

“A petition and account involving a trust must state the names and last known addresses of all vested or contingent beneficiaries, including all persons in being who may or will receive income or corpus of the trust, provided, however, that (1) during the time that the trust is revocable and the person holding the power to revoke the trust is competent, the names and last known addresses of beneficiaries who do not hold the power to revoke do not need to be stated, and (2) the petition or account does not need to state the name and last known address of any beneficiary who need not be given notice under Probate Code section 15804.” (Rules of Court, Rule 7.902.)

An objection can be made at any time and even orally at the hearing. (Probate Code, § 1043.) Therefore, appearances are required.

The parties appearing at the hearing on June 23, 2021 presented argument. The court ordered petitioner to file proof of service as to all interested parties; and continued the hearing for oral argument on Sonja Bauer’s demurrer and motion for an independent medical examination.

On July 21, 2021 Sonja Bauer filed objections to the petition.

At the hearing on July 28, 2021 the parties advised the court that they are engaged in mediation and their request for continuance of the hearing was granted. The hearing was continued to October 6, 2021.

At the hearing on October 6, 2021 the matter was continued to December 1, 2021. On November 18, 2021 the parties filed a joint stipulation to continue the hearing date to January 12, 2022 in order to allow additional time to resolve all issues.

TENTATIVE RULING # 20: UPON STIPULATION OF THE PARTIES, THIS MATTER IS CONTINUED TO 8:30 A.M. ON WEDNESDAY, JANUARY 12, 2022 IN DEPARTMENT EIGHT.

21. MATTER OF THE DONNA L. PHILLIPS TRUST PP-20210032

Review Hearing Re: Status of Settlement of Case.

Susan Didricksen, the current trustee of the Trust, filed a Petition for Instructions and for Order to Return Possession of Property.

The case settled at the MSC on August 5, 2021. Attorney fees are to be paid out of the sale of the Michigan Blvd. property; the property is to be placed for sale by a realtor chosen by the trustee; and distribution of the personal property was to be resolved by the trustee.

Petitioner's counsel was to prepare an order. The court set a review hearing for November 10, 2021. At the hearing on November 10, 2021 the court continued the hearing to December 1, 2021 and stated that if the order is received, the matter would be dropped from the calendar. The order was not in the court's file at the time this ruling was prepared.

TENTATIVE RULING # 21: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 1, 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.

22. MATTER OF THE GERITY FAMILY TRUST PP-20210197**Petition to Confirm Trust Assets.**

The successor trustee of the Gerity family Trust petitions for an order determining that certain real property, a Fidelity Investments Account, a Wells Fargo Checking Account, and a Wells Fargo Brokerage Account are assets of the Trust despite formal title being held in the name of the deceased settlor. The petition alleges: the decedent settlor intended that each of these assets were to be held as assets of the Trust; the real property and Fidelity Investment Account were listed in Schedule A of the Trust instrument as being assets of the Trust (Petitioner's Exhibits A and G.); that the settlor told the petitioner a few months before his death that he intended that the Wells Fargo accounts be transferred to the Trust as he intended to use them to fund two sub-trusts for his grandsons' college education following his death; due to his declining health, he requested the petitioner assist him in transferring those two accounts to the trust as his attorney-in-fact under a power of attorney; although petitioner was added as the settlor's authorized agent on these two Wells Fargo accounts prior to the settlor's death, the settlor passed away thereby terminating petitioner's power of attorney authority to formally transfer title to the Trust before completion of the transfer; and further evidence of the decedent settlor's intent to transfer the real and personal property is the decedent settlor's pour-over will (Petitioner's Exhibit I.).

"All proceedings concerning the transfer of property of the trust shall be conducted pursuant to the provisions of Part 19 (commencing with Section 850) of Division 2." (Probate Code, § 17200.1.)

The trustee or any interested person may file a petition to determine ownership of real or personal property and to obtain an order directing the conveyance or transfer real or personal

property in any of the following cases: “(A) Where the trustee is in possession of, or holds title to, real or personal property, and the property, or some interest, is claimed to belong to another. (B) Where the trustee has a claim to real or personal property, title to or possession of which is held by another. (C) Where the property of the trust is claimed to be subject to a creditor of the settlor of the trust.” (Probate Code, § 850(a)(3).)

Where the petition to determine ownership of property involves a Trust, notice of the hearing and a copy of the petition must be served at least 30 days prior to the hearing on the trustee and each person claiming an interest in, or having title to or possession of, the subject property in the same manner as service of a summons and complaint and by mail to all beneficiaries and the Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General. (Probate Code, §§ 851(a)(2), 851(b)(3) and 17203(a).)

There is no proof of service in the court’s file, which declares the interested persons were served notice of the hearing on December 1, 2021 along with a copy of the petition. The court can not rule on the merits of the petition absent adequate proof of service on the interested persons.

“A person having or claiming title to or an interest in the property which is the subject of the petition may, at or prior to the hearing, object to the hearing of the petition if the petition is filed in a court which is not the proper court under any other provision of law for the trial of a civil action seeking the same relief and, if the objection is established, the court shall not grant the petition.” (Probate Code, § 853.)

“Except as provided in Sections 853 and 854, if the court is satisfied that a conveyance, transfer, or other order should be made, the court shall make an order authorizing and directing the personal representative or other fiduciary, or the person having title to or

possession of the property, to execute a conveyance or transfer to the person entitled thereto, or granting other appropriate relief." (Probate Code, § 856.)

A written document declaring a trust in the property described in Schedule A signed by the settlor who owns the described property at the time he or she made the declaration constitutes a proper manifestation of his or her intent to create a trust. There is no requirement that the settlor/trustee execute a separate writing conveying the property to the trust. (Estate of Heggstad (1993) 16 Cal.App.4th 943, 948.)

In addition, where the Trust Instrument or another writing states that all of settlor's right, title and interest to all of his or her real property is included in the Trust's assets, and it is possible by resorting to extrinsic evidence to determine that settlor held title to the real property that is sought to be confirmed as a Trust asset, the statute of frauds creates no bar to a petition for an order confirming that the real property is part of the Trust's assets. (See Ukkestad v. RBS Asset Finance, Inc. (2015) 235 Cal.App.4th 156, 164.)

The subject real property and Fidelity Investment account are listed in Schedule A of the Trust instrument. The court is inclined to find they are assets of the Trust estate even though title was not formally transferring to the Trustee of the Trust.

However, verbal statements of intent to include the Wells Fargo brokerage account and Wells Fargo checking account as trust assets, which were never formally transferred to the Trust estate, is not a written statement by the settlor declaring that the settlor transferred those accounts to the Trust estate. Furthermore, the execution of a pour-over will is not a statement by the settlor transferring his assets to the Trust estate. It is a testamentary disposition of any property not in Trust estate after his death.

Heggstad, supra, and Ukkestad, supra, did not hold that a testamentary disposition set forth in a pour over will was a declaration that the grantor/settlor/trustor held that property in trust without needing to probate the will.

"A will speaks as of the time of the testator's death (*Estate of Berger*, 198 Cal. 103, 243 P. 862)..." (*Estate of Lamb* (1971) 19 Cal.App.3d 859, 864-865.) There is a general principle that "a will is normally construed to speak in the light of affairs as they exist at the time of the testator's death and not as they had been at the time the will was made. (*Estate of Babb*, 200 Cal. 252, 255-256, 252 P. 1039.)" (*In re Stephenson's Estate* (1961) 235 Cal.App.2d 326, 329-330.)

A will is an instrument that is intended to create a revocable disposition of the testator's property to accrue and take effect only upon the testator's death and passing no present interest. (See *Crook v. Contreras* (2002) 95 Cal.App.4th 1194, 1202.)

"A will is a disposition of property to take effect at the death of the testator and in determining whether the instrument propounded was intended to be testamentary, reference will be had to the surrounding circumstances, and the language will be construed in the light of these circumstances. If it shall then appear that the instrument was intended to be testamentary, the court will give effect to the intention, if it can be done consistently with the language of the instrument and the particular form of the instrument is immaterial. No particular words are necessary to show a testamentary intent. It must appear only that the maker intended by it to dispose of property after his death. *In re Estate of Spitzer*, 196 Cal. 301, 237 P. 739." (*In re Smilie's Estate* (1950) 99 Cal.App.2d 794, 799-800.)

Therefore, a will is not a settlor's/grantor's/trustor's written manifestation of intent to create an immediate trust in his property by declaring himself or herself trustee of the property.

The court is inclined to find that the Wells Fargo accounts are not Trust assets by virtue of the executed pour-over will; and those assets will need to be administered in the probate of the pour-over will.

However, the court can not rule on the merits of the petition absent adequate proof of service on the interested persons.

TENTATIVE RULING # 22: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 1, 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.

23. MATTER OF THE PARKHURST TRUST PP-20160118

(1) Mickell Parkhurst's and Robert Parkhurst's Petition to Enforce Judgment.

(2) Ray Parkhurst, Jr.'s Petition to Vacate Stipulated Judgment

TENTATIVE RULING # 23: THESE MATTERS ARE CONTINUED TO 8:30 A.M. ON
WEDNESDAY, JANUARY 26, 2022 IN DEPARTMENT EIGHT.