

1. ESTATE OF BERGE 22PR0020

Petition to Administer Estate.

The petition requests that the court waive the bond requirement on the ground that all intestate heirs will submit executed waivers to the court.

The Judicial Council of California adopted for mandatory use as of January 1, 2015 a form Waiver of Bond by Heir or Beneficiary (Judicial Council Form DE-142/DE-111(A-3d)). Only one form waiver was filed, which was executed by Eric Berge. There are no mandated form waivers executed by the remaining potential intestate heirs in the court's file. Therefore, a bond will be required should the waiver forms not be filed.

The court notes that the petition states that nearly all property was held by decedent and petitioner as joint tenants, with the exception of one stock portfolio, which must be administered in probate. The petition also estimates that the decedent's estate's property has no value. The lack of valuation of the stock portfolio needs to be explained.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 4, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

2. ESTATE OF CHINITZ 22PR0062

Petition to Administer Estate.

TENTATIVE RULING # 2: THE PETITION IS GRANTED. THE COURT SETS A REVIEW HEARING RE: INVENTORY AND APPRAISAL AT 8:30 A.M. ON WEDNESDAY, SEPTEMBER 7, 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, MAY 3, 2023 IN DEPARTMENT EIGHT. (PROBATE CODE, § 12200.)

3. ESTATE OF BOE PP-20170135

Review Hearing Re: Status of Administration.

Letters of Administration were issued on October 23, 2017. Partial Inventory and Appraisal, Number 1, was filed on March 6, 2018. There is no Final Inventory and Appraisal in the court's file.

In addition, the partial inventory and appraisal included real property, the personal representative failed to provide a property tax certificate, and failed to complete paragraph 5 of the partial inventory and appraisal.

Sasha Narayan, Kaiya Narayan, and Beverly Narayan filed objections to the Partial Inventory and Appraisal on April 13, 2018. They objected to the inclusion of the two parcels of real property in Siskiyou County and a red label violin as the real property purportedly belongs to the former spouse either entirely or partially and the violin belongs to one of the former step-children. They also object to item number 59, miscellaneous household furniture and furnishings, on the grounds that the item is not fully described and they are aware of certain household furniture and furnishings that belong to them and should not be held as estate assets.

On July 5, 2019 the court entered its order approving the petition for order finding that DNA tests confirm that Zelyndah Boe and Victoria Ericsson-Boe are decedent's biological children and that Sasha Narayan and Kaiya Narayan are not heirs of the decedent pursuant to the parties' settlement agreement. The court expressly found in the order that Sasha Narayan and Kaiya Narayan were not heirs of the estate and the only heirs are Zelyndah Boe and Victoria Ericsson-Boe. (July 5, 2019 Order Approving Petition, page 3, paragraphs 3 and 4.)

On July 19, 2019 the court entered an order approving the parties' settlement agreement related to the administrator's petition to establish a claim to ownership of certain property and the petition for entitlement to estate distribution. The settlement agreement expressed the parties intent to resolve all issues pending between them (Settlement Agreement, page 2.), they agreed to fully and completely release the other parties for the matters set forth in the petitions, responses and objections (Settlement Agreement, page 5, paragraph 11.), and expressly agreed to dismiss their pending petitions and objections (Settlement Agreement, page 4, paragraph 8.). The settlement agreement appears to expressly resolve Sasha Narayan's, Kaiya Narayan's, and Beverly Narayan's pending objections to the Partial Inventory and Appraisal that were filed on April 13, 2018.

At the hearing on January 20, 2021 the court was advised that the personal representative was awaiting the sale of land in Siskiyou County. At the hearing on July 18, 2021 the court continued the hearing to January 26, 2022. The hearing was then continued to May 4, 2022.

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

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 4, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

4. ESTATE OF BEHRENDT PP-20200209

Review Hearing Re: Inventory and Appraisal.

On July 7, 2021 the court granted the petition and admitted the lost will to probate. Bond was set in the amount of \$97,000, which was posted on June 15, 2021. There is no order for probate and no Letters Testamentary in the courts file. This needs to be corrected. There is no Final Inventory and Appraisal in the court's file.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 4, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

5. ESTATE OF O’SULLIVAN PP-20200146

Review Hearing Re: Status of Administration.

The order of final distribution was entered on February 4, 2022. There is no receipt of distribution executed by the co-trustees of the Dolores O’Sullivan Revocable Trust in the court’s file and no ex parte Petition for Final Discharge (Judicial Council Form DE-295.) in the court’s file.

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 4, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

6. ESTATE OF GIAMBASTIANI PP-20210172

1st and Final Report on Waiver of Account and Petition for Final Distribution.

The decedent died testate and his pour-over will was admitted to probate October 27, 2021. It appears the will beneficiaries are the Enzo and Lara Giambastiani 1992 Revocable Living Trust and John Giambastiani. The intestate heirs have each executed a waiver of the accounting requirement. As a beneficiary of the pour-over will, the current trustee of the Enzo and Lara Giambastiani 1992 Revocable Living Trust must also execute a waiver of the accounting requirement and that waiver must be submitted to the court. Either an account must be presented or the trustee must waive the account.

The disclaimers executed by intestate heirs Lara Giambastiani and Ray Giambastiani attached to the petition as Exhibits 5 and 6 have no legal effect whatsoever concerning distribution of the estate according to the provisions of the pour-over will.

The petition requests that all assets in the probate estate consisting of 50% of the proceeds of the sale of real property held in the name of decedent and John Giambastiani as tenants in common be distributed 100% to John Giambastiani, because the pour-over will affirms in the third paragraph of that will that there is a joint tenancy the testator had with his son John and he affirmed that joint tenancy. The petition admits in paragraph 34 that the property was mistakenly titled as tenants in common.

“The intention of the transferor as expressed in the instrument controls the legal effect of the dispositions made in the instrument.” (Probate Code, § 21102(a).) “[T]he intention of the testator as expressed in the testamentary instrument is always the polestar in the interpretation of a will. (§ 21102, former § 6140.)” (Estate of Hermon (1995) 39 Cal.App.4th 1525, 1531.)

“The basic obligation of the trial court here was, insofar as possible under the circumstances, to ascertain the intent of the decedent at the time she executed the will. (*Estate of Mohr*, 7 Cal.App.3d 641, 86 Cal.Rptr. 731.) In so doing, however, the trial court was confined to discerning that intent in terms of the words actually used by the decedent. (*Estate of Flint*, 25 Cal.App.3d 945, 102 Cal.Rptr. 345; *Estate of Brunet*, 34 Cal.2d 105, 207 P.2d 567.) ¶ Even though it may appear that a testator meant to accomplish a certain objective with his or her gift, unless he or she used words from which that intent can reasonably be inferred, the court is powerless, in effect, to write a new will, posthumously, in order to achieve that objective. (*Estate of Flint*, supra; *Estate of Brunet*, supra; *Estate of Herreshoff*, 144 Cal.App.2d 597, 301 P.2d 457.) ¶ On the other hand, a will should be interpreted in accordance with the clear intent of the testator even though that interpretation differs from the technical meaning of the words used. (*Estate of Akeley*, 35 Cal.2d 26, 215 P.2d 921.)” (*Estate of Cleaver* (1981) 126 Cal.App.3d 341, 345-346.)

The estate must be distributed according to the provisions of the pour-over will. The pour over will expresses a clear intent that decedent’s 50% ownership of the subject real property was to pass directly to John Giambastiani and not the Trust.

The notice of hearing served on the intestate heirs states that the hearing is to be held on May 5, 2022, not May 4, 2022. Therefore, the notice is defective. The current trustee of that Trust is not identified, therefore, the court can not ascertain whether the notice and petition were served on the sole will beneficiary. Notice and a copy of the petition must be served on the trustee.

In any event, absent waiver of the error by all interested persons, including the trustee of the Enzo and Lara Giambastiani 1992 Revocable Living Trust, the court can not hold a hearing on the merits of the Final Report and petition on March 4, 2022 as it would violate the

interested persons' fundamental right to due process. Should the waiver of error not be submitted and trustee waiver of account not be submitted, the matter must be continued.

Appearances are required in order to provide the interested parties an opportunity to waive the notice deficiencies and to allow the trustee of the Trust to submit a waiver of account.

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 4, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

7. ESTATE OF FORNI PP-2020097

(1) Petition for Final Distribution.

(2) Review Hearing Re: Status of Administration.

The petition does not state that the personal representative served the mandated notice of administration of the estate on the California Franchise Tax Board.

“(c)(1) Not later than 90 days after the date letters are first issued to a general personal representative, the general personal representative or estate attorney shall give the Franchise Tax Board notice of the administration of the estate. The notice shall be given as provided in Section 1215. ¶ (2) The provisions of this subdivision shall apply to estates for which letters are first issued on or after July 1, 2008.” (Probate Code, § 9202(c).)

The personal representative’s counsel previously reported to the court on August 13, 2021 that he sent the standard request to the State Franchise Tax Board for a release knowing the decedent’s taxes were paid, however, he had not received the release. The hearing was continued several times to allow sufficient time to receive the Franchise Tax Board’s response. The personal representative did not appear at the October 6, 2021, January 12, 2022, and March 2, 2022 hearings and the matters were continued to May 4, 2022.

There was no release from the State Franchise Tax Board in the court’s file at the time this ruling was prepared.

The court can not approve final distribution until this issue is resolved.

TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 4, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE

SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT
www.eldoradocourt.org/onlineservices/vcourt.html.

8. ESTATE OF TAYLOR 22PR0081

Petition to Administer Estate.

The proof of service declares that intestate heir Kieran Taylor was served notice of the hearing and a copy of the petition by mail to a street address in Placerville while the verified petition states that street address is in Gold River. This needs to be explained.

Petitioner filed an Inventory and Appraisal on March 23, 2022 listing the sole asset as an Ameritrade Account in decedent's name holding various stocks with a reported net value of \$182,428.26 as of December 31, 2021. The Inventory and Appraisal is fatally defective. It does not state whether it is a partial or final inventory and appraisal and the petitioner has improperly appraised Attachment 2 property consisting of stocks held in an Ameritrade Account. Therefore, a Final Inventory and Appraisal will need to be filed should the petition be granted and letters of administration issued.

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.” (Emphasis added.) (Probate Code, § 8901.)

The petition requests that the bond requirement be waived, because all heirs will submit executed waivers of the bond requirement.

The bond requirement may be waived where all beneficiaries waive in writing the requirement of a bond and the written waivers are attached to the petition. (Probate Code, § 8481(a).) The Judicial Council of California adopted for mandatory use as of January 1, 2015 a form Waiver of Bond by Heir or Beneficiary (Judicial Council Form DE-142/DE-111(A-3d)).

There are no Judicial Council form waivers in the court’s file that are executed by the intestate heirs, therefore, should the petition be granted, the court would be inclined to set bond in the amount of \$184,000.

TENTATIVE RULING # 8: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 4, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

9. ESTATE OF GORDON PP-20200222

Review Hearing Re: Status of Administration.

Letters of Administration were issued on February 10, 2021. The Final Inventory and Appraisal was filed on November 23, 2021. There is no Final Account and Request for Order of Final Distribution in the court's file.

TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 4, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

10. MATTER OF THE GARY LEE FULLERTON TRUST 22PR0069**Petition to Reclaim Property of the Decedent.**

The trustee of the Gary Lee Fullerton Trust petitions to reclaim various items of personal property of decedent settlor Gary Lee Fullerton that was allegedly wrongfully removed from a residence held by the Herbert J. Fullerton Trust that decedent settlor Gary Lee Fullerton resided in according to the terms of the Herbert J. Fullerton Trust until he contracted brain cancer, was hospitalized and was forced to live in a skilled nursing facility due to health reasons with the hope he could return to the residence. The verified petition alleges on October 16, 2020, Cathy Keeler, trustee of the Gary Lee Fullerton Trust, went to the residence and discovered that the gate lock had been cut, the alarm wiring cut, and discovered that Georgina Miller, the trustee of the Herbert J. Fullerton Trust, her sister, and her brother-in-law had entered the house through a window and changed the locks to the house; Cathy Keeler and Bert Keeler were threatened with trespass if they came on the property again; all of Gary Fullerton's personal property was removed from the residence, including his gunsmithing business property; Cathy Keeler reported the theft of his personal property and gunsmithing business property to the Sheriff's Department and the theft of gun shop property to the ATF and California DOJ; when Georgina Miller and her family found out about these reports, some of the items from the gunsmithing business were returned; Cathy Keeler was allowed on the premises to retrieve these few items; Gary Lee Fullerton passed away on December 20 2020; the residence was sold in April 2021, including a refrigerator and washing machine purchased by Gary Fullerton; on June 11, 2021 the trustee's counsel made a demand for the items belonging to Gary Fullerton; a follow-up attempt to obtain the property was made by counsel's October 7, 2021 letter to Georgina Miller, trustee of the Herbert J. Fullerton Trust for the return

of all personal property owned by Gary Lee Fullerton; there were no appreciable results from these efforts to obtain the property; petitioner filed a subsequent report with the Sheriff's Department and a claim for stolen property with Gary Fullerton's property insurance carrier; and the business personal property coverage is only \$2,500.

Petitioner moves for an order pursuant to Probate Code, § 850 directing Georgina Miller to transfer to the Gary Lee Fullerton Trust any and all assets removed from the residence that belonged to Gary Lee Fullerton; finding that Georgina Miller as trustee of the Herbert J. Fullerton Trust is liable for twice the value of property wrongfully taken in bad faith pursuant to Probate Code, § 859; and ordering that petitioner be awarded attorney fees and costs pursuant to the provisions of Probate Code, § 859.

"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).)

The proof of service filed on April 4, 2022 declares that Georgina Miller and numerous other persons were served notice of the hearing and a copy of the petition by ordinary mail on April 1, 2022.

First, the court can not confirm that all interested persons were validly served notice of the hearing and a copy of the petition, because the petition does not list the names and addresses of each person entitled to notice of the petition.

“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.” (Emphasis added.) (Probate Code, § 17201.)

Second, inasmuch as it appears that Georgina Miller as trustee of the Herbert J. Fullerton Trust claims the subject personal property that was present in the residence owned by the Herbert J. Fullerton Trust as property of that Trust, she must be served in the same manner as a summons and complaint and not merely by ordinary mail. Therefore, even if the petition and notice of hearing were served by mail to her proper address, which the court can not confirm, the service is defective and the court can not reach the merits of the petition.

“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.)

“If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of property belonging to the estate of a decedent, conservatee, minor, or trust, the person shall be liable for twice the value of the property recovered by an action under this part. The remedy provided in this section shall be in addition to any other remedies available in law to a trustee, guardian or conservator, or personal representative or other successor in interest of a decedent.” (Probate Code, § 859.)

Inasmuch as there are service problems, the court can not reach the merits of the petition. Appearances are required to advise the court when these service issues will be resolved.

TENTATIVE RULING # 10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 4, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

11. ESTATE OF GENOUD PP-20190251

Review Hearing Re: Status of Administration

Letters of Administration were issued on April 15, 2020. The Final Inventory and Appraisal was filed on September 29, 2020.

At the hearing on July 14, 2021 the personal representative's counsel explained that purchases were made after decedent's death by a family member that they are attempting to sort out. The court continued the hearing to September 29, 2021.

The hearing was continued to September 29, 2021, January 5, 2022, March 2, 2022, and May 4, 2022.

The court has not received any further word concerning the status of working out the issue with the family member and there is no Final Account and Request for Order of Final Distribution in the court's file.

TENTATIVE RULING # 11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 4, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

12. ESTATE OF DAY 22PR0068

Petition to Administer Estate.

TENTATIVE RULING # 12: THE PETITION IS GRANTED. BOND IS SET IN THE AMOUNT OF \$20,000 AS REQUESTED. THE COURT SETS A REVIEW HEARING RE: INVENTORY AND APPRAISAL AT 8:30 A.M. ON WEDNESDAY, SEPTEMBER 7, 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, MAY 3, 2023 IN DEPARTMENT EIGHT. (PROBATE CODE, § 12200.)

13. ESTATE OF GRISHAM 22PR0061

(1) Petition to Administer Estate.

(2) Petition to Admit Holographic Will to Probate.

The verified petition states: decedent died intestate leaving an estate with assets estimated to be worth about \$988,000; decedent's three siblings are the only intestate heirs; and one of the siblings, Sara McCarthy, petitions for the court to appoint a professional fiduciary, Deryk Walcott, as administrator of the estate with bond set in the amount of \$988,000.

The court takes judicial notice that Deryk Walcott is licensed as a professional fiduciary by the California Professional Fiduciaries Licensing Bureau.

Another intestate heir, Rebecca Bair objects to the petition to administer the estate as an intestate proceeding. Rebecca Bair contends that decedent died testate and has filed a cross-petition to admit to probate a purported holographic will of decedent that leaves everything to Rebecca Bair and disinherits decedent's other siblings; and appoint Deryk Walcott as administrator with will annexed

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

Petitioner Rebecca Bair has not filed proof of service of notice of the hearing and her petition by mail on the heirs, devisees and executors. "At least 15 days before the hearing of a petition for administration of a decedent's estate, the petitioner shall serve notice of the hearing by mail or personal delivery on all of the following persons: (a) Each heir of the decedent, so

far as known to or reasonably ascertainable by the petitioner. (b) Each devisee, executor, and alternative executor named in any will being offered for probate, regardless of whether the devise or appointment is purportedly revoked in a subsequent instrument.” (Probate Code, § 8110.)

The court can not consider Rebecca Bair’s petition until adequate proof of service is filed.

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

The original purported holographic will has not been lodged with the court. This must be done.

Rebecca Bair has failed to file proof of the holographic will.

“A holographic will may be proved in the same manner as other writings.” (Probate Code, § 8222.) There is no proof of holographic will declaration in the court’s file, which authenticates the handwriting and signature on the holographic will as being decedent’s. (Judicial Council Form DE-135.)

The court can not admit a holographic will that has not been adequately proven as genuine.

TENTATIVE RULING # 13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 4, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

14. ESTATE OF BEAUPRE 22PR0066

Petition to Admit Lost Will to Probate.

The verified petition states that petitioner has been unable to locate the decedent's written will. (Petition, Attachment 3f(3).) Declarations have been submitted to prove the terms of the written will and to prove up that it was a lost will that was not revoked.

Each of the four intestate heirs have executed the Judicial Council form waivers of the bond requirement (Judicial Council Form DE-142/DE-111(A-3d).) and those waiver forms are attached to the petition.

Petitioner has not filed proof of service of notice of the hearing and the petition by mail on the heirs listed in the petition. "At least 15 days before the hearing of a petition for administration of a decedent's estate, the petitioner shall serve notice of the hearing by mail or personal delivery on all of the following persons: (a) Each heir of the decedent, so far as known to or reasonably ascertainable by the petitioner. (b) Each devisee, executor, and alternative executor named in any will being offered for probate, regardless of whether the devise or appointment is purportedly revoked in a subsequent instrument." (Probate Code, § 8110.)

The court can not consider the petition until adequate proof of service is filed.

"If the testator's will was last in the testator's possession, the testator was competent until death, and neither the will nor a duplicate original of the will can be found after the testator's death, it is presumed that the testator destroyed the will with intent to revoke it. This presumption is a presumption affecting the burden of producing evidence." (Probate Code, § 6124.) "The petition for probate of a lost or destroyed will shall include a written statement of

the testamentary words or their substance. If the will is proved, the provisions of the will shall be set forth in the order admitting the will to probate.” (Probate Code, § 8223.)

In discussing the burden of proof related to proving a lost will the Third District has stated: “The burden of proving that the will which respondent seeks to probate was either in existence at the time the testator died, or had been destroyed fraudulently or by public calamity without his knowledge during his lifetime, was upon respondents as proponents of the will. *In re Estate of LeSure*, 21 Cal.App.2d 73, 68 P.2d 313. There is no suggestion of fraud in the case, nor proof of a public calamity. The only question is whether or not there is sufficient evidence in the record to justify a finding that the will was lost, and that it was in existence at the time of death. This may sound contradictory, but it is obvious the words "in existence" import "unrevoked".” (In re Flood's Estate (1941) 47 Cal.App.2d 809, 810-811.)

The Third District has also held with regards to proof of a lost will: “The existence of a will at the testator's death is to be proved as any other question to which the general rules of evidence apply. It may be proved by circumstantial evidence and the inferences which may reasonably be drawn therefrom. *In re Estate of Moramarco*, 86 Cal.App.2d 326, 194 P.2d 740; *In re Estate of Ronayne*, 103 Cal.App.2d 852, 230 P.2d 423. As pointed out in the statement of facts, both before and after the execution of the will of June 20, 1952, Mrs. Sitton referred to respondent as the object of her bounty, and on many occasions after she returned from the east in July, 1952, and even as late as September 10, 1952, just four days prior to her untimely death, she stated that respondent was to have everything. These facts, coupled with the evidence as to the state of disorder in which decedent's home was found on September 14, 1952, including the breaking open of the decedent's desk where her private papers were kept, and the fact that, after what thus appeared to be a search for some document, the tin box in which she kept papers and things of value was missing, and, finally, the proof supplied by the

contestant Elgan W. Sitton, in his testimony that, on the afternoon of the day of Ethel's death, someone phoned his daughter that a letter written by Ethel had been found, and that the letter stated that she was going on a trip back east, and that if anything happened to her, everything she had was to go to Lila, all combined to furnish satisfactory evidence that the will was in existence at the time of the death of testatrix.” (In re Sitton's Estate (1957) 149 Cal.App.2d 1, 5.)

The appellate court in In re Hoffman's Estate (1955) 137 Cal.App.2d 555 discussed the circumstances in that case that established the will was lost, rather than destroyed with the intent to revoke. The appellate court stated: “Viewing the evidence as an entirety, and in the light most favorable to the trial court's findings, it is true, as states in respondents' brief, that ‘testator at all times referred to his will as being in existence and at no time made any indication of a desire to revoke or destroy it. In his last codicil, which was executed by him in June, 1953, he declared over his signature that he expressly reaffirmed and republished the provisions of his previous will and codicil. * * * So also in October, 1953, shortly before his death, he again referred to his will and requested his attorney to see that his wishes should be carried out in that regard. There is nowhere in the record any evidence to the contrary’. ¶ It is not known what happened to the original, executed drafts of the will and first codicil, but the record affords substantial evidence in support of the trial court's finding ‘that said will and first codicil were in existence at the time of decedent's death and have either not been found or have been lost or destroyed by some person other than decedent’. To require more than this would be to demand the impossible. There is no question as to the authenticity of the carbon copies of these instruments, nor that, with the executed second codicil, these documents represent the testator's testamentary wishes.” (In re Hoffman's Estate (1955) 137 Cal.App.2d 555, 560–561.)

Petitioner has attached three declarations to the petition supporting his claim that decedent had prepared a written will that named him as executor of the will and left decedent's entire estate to petitioner as he had always held petitioner out as his grandson. One of those declarants was intestate heir Robert Beaupre, one of decedent's four surviving brothers. All three declarations state under oath that each of them had close relationships with decedent; one was his brother; decedent told each of them shortly before his death that he had a written will that named the person he held out as his grandson, Corey Brown, to act as his executor; the terms of the will provided that decedent's assets would be distributed to the person he held out as his grandson, Cory Brown; and decedent never informed them that he revoked or destroyed his will. One declarant stated the declarant was a former step-son of decedent who had not been adopted by him; the declarant's mother had divorced decedent prior to decedent's death; declarant remained close to decedent; and was a biological parent of Cory Brown.

Absent objection or opposition, it appears that petitioner has proved up the lost will and its terms. However, the court can not rule on the merits of the petition until all interested persons are provided adequate notice of this proceeding, served a copy of the petition, and have a reasonable opportunity to be heard on the matter and to oppose the petition after such notice.

TENTATIVE RULING # 14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 4, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.

15. ESTATE OF COOPER 22PR0043

Petition to Administer Estate.

Petitioner seeks the court to waive the bond requirement by ordering that the proceeds from the sale of the sole asset of the estate, a residence, be deposited into a blocked account.

Should the petition be granted, the court will consider that request when ruling on the petition, provided that only limited authority be granted under the Independent Administration of Estates Act that requires court approval of the sale and an order that the escrow instructions provide that the net proceeds of the sale be directly deposited into a blocked account.

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

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

TENTATIVE RULING # 15: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, MAY 4, 2022 IN DEPARTMENT EIGHT. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html.