

July 29, 2024
Dept. 9
Probate Tentative Rulings

1.	23PR0062	ESTATE OF BROYLES
Petition for Final Distribution		

Letters of Administration with Will Annexed were issued on June 14, 2023, granting Petitioner full authority under the Independent Administration of Estates Act.

A Final Inventory and Appraisal was filed on February 8, 2024. The Petition complies with Local Rule 10.07.12 regarding personal and estate taxes. No change of ownership statement is required, because decedent owned no real property at the time of death.

Proof of Service of Notice of the hearing on the Petition was filed on June 10, 2024. The California Franchise Tax Board has filed a request for special notice in this proceeding.

The proposed distribution of the estate includes full distribution to Petitioner outright, without required the Trust for Children. Petitioner is the sole child of decedent and is 34 years old. The Trust states that after the child has attained 30 years old, they can request the remaining assets and the Trust would terminate.

The Petition requests:

1. The First and Final Account and Report be settled, allowed and approved;
2. All reported acts, transactions and proceedings of the Administrator be confirmed and approved;
3. The Administrator be authorized to pay statutory attorney fees in the amount of \$7,124.50 plus \$2,162.02 for costs advanced to the estate, and for any additional costs advanced on behalf of the estate relating to the closing of the Estate administration;
4. The Administrator be authorized to retain \$2,500 in closing expenses and to pay liabilities, and to deliver the unused part to the beneficiaries of the estate without further court order after closing expenses have been paid;
5. Approval of distribution of the estate directly to Alexandra Mayer without the need for an establishment of the Trust for Children;
6. Distribution of the estate in Petitioner's hands and any other property of the estate not now known or later discovered be distributed to Alexandra Mayer; and,
7. Upon filing of receipts that Petition may apply to be discharged and released from all liability that may be incurred hereafter.

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TENTATIVE RULING #1:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

AN ORDER FOR FINAL DISTRIBUTION HAVING BEEN ENTERED BY THE COURT ON JULY 29, 2024, THE MATTER IS CONTINUED TO 8:30 A.M. ON MONDAY, JULY 28, 2025, IN DEPARTMENT NINE, BY WHICH TIME THE COURT EXPECTS RECEIPTS AND AN EX PARTE PETITION FOR FINAL DISCHARGE (JUDICIAL COUNCIL FORM DE-295) TO BE FILED WITH THE COURT.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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2.	24PR0156	ESTATE OF HOFFMAN
Letters of Administration		

Decedent died intestate on September 21, 2023, survived by two adult children. Petitioners are decedent's adult sons.

The Petition requests full authority under the Independent Administration of Estates Act.

Waivers of bond have been filed with the court by the heirs.

A Duties/Liabilities statement (DE 147/DE 147s) for both Petitioners was filed on June 3, 2024.

Proof of service of notice of the hearing on the Petition was filed on July 10, 2024.

Proof of publication was filed on June 25, 2024.

TENTATIVE RULING #2:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JULY 28, 2025, IN DEPARTMENT NINE.

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3.	23PR0058	ESTATE OF CAMPBELL
Status of Administration		

Letters of Administration were issued on September 7, 2023.

An Inventory and Appraisal was filed on January 11, 2024, and February 28, 2024. The change of ownership statement(s) with the county recorder or assessor in each county where the decedent owned real property at the time of death, as provided in section 480 of the California Revenue and Taxation Code, was not filed.

There is no Petition for Final Distribution on file with the court.

TENTATIVE RULING #3:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 29, 2024, IN DEPARTMENT NINE.

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JULY 28, 2025, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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4.	23PR0129	ESTATE OF SBRAGIA
Modification of Trust		

Decedent died intestate on September 24, 2022, and is survived by Petitioner (his spouse) and three adult children. The Trust was established on February 21, 1992.

Probate Code section 17200 provides in pertinent part:

(a) Except as otherwise 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.

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(1) Determining questions of construction of a trust instrument

...

(8) Granting powers to the Trustee

...

(13) Approving or directing the modification or termination of the trust.

Probate Code section 15409(a) allows the Superior Court to modify either administrative or dispositive provisions of the Trust "if, owing to circumstances not, known to the trustor and not anticipated by the trustor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust." Also, the statute provides that, if necessary to carry out the purposes of the trust, the court may order the trustee "to do acts that are not authorized or are forbidden by the trust instrument."

The Trust states that upon the first death, two sub trusts are to be created – the Credit Trust and the Survivor’s Trust. The intent was to provide for the surviving spouse during their lifetime and to reduce or eliminate estate taxes. In 1992, the exemption was \$600,000, but at the time of decedent’s death in 2022, it was \$12,060,000. Based on the value of the estate, the split is not necessary in order to avoid estate taxes. The remaindermen beneficiaries of both Trusts would be the children of the Trustors.

The Petition requests that all of Petitioner’s separate property and her one-half (1/2) interest in the community property, along with Decedent’s separate property and his one-half (1/2) interest in the community property should be retained in the name of the Sbragia Family Survivor’s Trust, and that no bond be required at this time.

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TENTATIVE RULING #4:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

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5.	24PR0152	ESTATE OF BRAMMER
Letters Testamentary		

Decedent died testate on April 8, 2024, survived by no next of kin, only an ex-spouse. Petitioner is decedent's friend.

The Petition requests full authority under the Independent Administration of Estates Act.

Petitioner was named as Executor in the Will.

The Will was lodged with the court on May 31, 2024, and is admitted to probate.

The Will waives bond.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on May 31, 2024.

Proof of service of notice of the hearing on the Petition was filed on June 5, 2024.

Proof of publication was filed on June 27, 2024.

TENTATIVE RULING #5:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JULY 28, 2025, IN DEPARTMENT NINE.

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6.	23CV0593	MATTER OF 3882 ARROWHEAD DRIVE
Motion to Set Aside		

TENTATIVE RULING #6:

MATTER CONTINUED TO AUGUST 19, 2024 AT 8:30 A.M. IN DEPARTMENT 9.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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7.	23PR0103	MATTER OF PAULSEN
Status of Administration		

Letters Testamentary were issued on July 31, 2023.

Final Inventory and Appraisal was filed July 19, 2024.

There is no Petition for Final Distribution on file with the court.

TENTATIVE RULING #7:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 29, 2024, IN DEPARTMENT NINE.

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, JULY 28, 2025, IN DEPARTMENT NINE.

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8.	24PR0161	ESTATE OF BONSER
Objection Hearing		

The Quentin Bonser, M.D. and Loellen R. Bonser Revocable Living Trust (the Trust) is the subject of this Petition. Both settlors are deceased, and the beneficiaries are their three adult children (Wayne, Patricia, and Carol), plus their daughter-in-law (Cathy). Wayne survived the settlors but has since passed away. His daughter, Marina Bonser, is the personal representative of his estate, and the Petitioner in this case.

The Trust was established on June 12, 1987, amended and restated in full on December 13, 2006, and amended on December 17, 2009, December 16, 2010, and February 7, 2012. The Petition includes the December 13, 2006, amendment and restatement, but not the amendments that followed. However, the Petition claims the Trust provides for equal distribution among the four beneficiaries. The 2006 version confirms this, but it is unknown whether the later amendments altered the distribution provisions.

Patricia became Successor Trustee upon Loellen's death on August 6, 2021. The Petition claims that less than 3 months after the second death, the first and second distributions occurred on November 26 and 29, 2021, and Patricia, Cathy, and Carol received distributions. The Petition states that Wayne did not receive a distribution at this time. Wayne died on December 27, 2021. The Petition states that the third distribution occurred on December 30, 2021¹, when Carol, Patricia, and Cathy received cash distributions, and Wayne's estate was excluded. In late 2022, the fourth distribution occurred and Petitioner claims Patricia, Cathy and Carol each received a distribution, but that Wayne's estate was excluded.

Petitioner claims the Trustee has never converted the stock held by the Bonser Trust into cash, and that by the time Wayne's estate received his stock distribution (November 15, 2023), that the stock value had declined by approximately \$70,000.

The Petition alleges breach of trust by the Trustee.

Duty of Loyalty

Trustee is held to a standard of care in administering the Bonser Trust requiring reasonable care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined from the trust instrument. (California Probate Code §16040(a)) The Trustee owes to the beneficiaries to the Bonser Trust a duty of loyalty to administer the trust, as set forth in California Probate Code §16002(a): "[t]he

¹ The Petition states that Wayne died on December 27, 2021, and that the third distribution occurred "three days after Wayne's death." (¶18) However, the Petition states the distribution occurred on December 30, 2022, which would be 1 year and 3 days after Wayne's death.

trustee has a duty to administer the trust solely in the interest of the beneficiaries. The duty of loyalty includes the equal treatment of the beneficiaries in distribution of trust assets. Bonser Trust provides that in the event of the death of the surviving settlor (Loellen Bonser), the trustee “shall divide the trust property .. into as many shares of equal market value as are necessary to create one share for each [beneficiary]” (Bonser Trust, Article 6, Section 6.3)

Petitioner claims that Trustee violated this duty of loyalty by excluding Wayne and his estate from distributions and failing to distribute the Trust assets equally; she further claims that Trustee’s retention of the stock for over two years resulted in significant loss of value, compared to the market value of the stocks distributed among other beneficiaries.

Duty to Make Trust Property Productive

By the same standard of care charged to the Trustee as described in Paragraph 17, the Trustee has the affirmative fiduciary duty to make trust property productive. California Probate Code § 16007 provides, “[t]he trustee has a duty to make the trust property productive under the circumstances and in furtherance of the purposes of the trust.” Furthermore, Bonser Trust dictates that the trustee’s power to retain the trust property must be “in the best interests of the trust or in furtherance of the goals of the settlors in creating the trust” and that the power is “subject to the standards of the prudent investor rule set forth in the California Uniform Prudent Investor Act, as amended from time to time. (Bonser Trust, Section 7.10)

Petitioner claims that Trustee failed to take necessary steps to preserve trust property by maintaining the stocks and not converting them to cash.

Duty to Avoid Conflict of Interest

By the same standard of care charged to the Trustee as described in Paragraph 17, the Trustee has a fiduciary obligation to avoid conflicts of interest in the administration of the trust. California Probate Code §16004 provides:

- (a) The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.
- (b) The trustee may not enforce any claim against the trust property that the trustee purchased after or in contemplation of appointment as trustee, but the court may allow the trustee to be reimbursed from trust property the amount that the trustee paid in good faith for the claim.
- (c) A transaction between the trustee and a beneficiary which occurs during the existence of the trust or while the trustee's influence with the beneficiary remains and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee's fiduciary duties. This presumption is a presumption affecting the

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burden of proof. This subdivision does not apply to the provisions of an agreement between a trustee and a beneficiary relating to the hiring or compensation of the trustee. (California Probate Code §16004)

Petitioner claims that Trustee failed to avoid an apparent conflict of interest and engaged in self-dealing with other beneficiaries.

The Petition seeks restitution to Wayne's estate or directly to Petitioner for losses incurred due to Trustee's alleged breach of duty, and adjustment of the final distributions to ensure equitable treatment of all beneficiaries.

The Court encourages the parties to bring copies of the three amendments that followed the 2006 Amendment and Restatement.

TENTATIVE RULING #8:

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9.	24PR0167	MATTER OF THE BARRE REVOCABLE TRUST
Petition for Accounting and Removal of Trustee		

The Petition states that a prior trust petition was filed and heard in Riverside County. Jurisdiction of trust administration matters is decided pursuant to Probate Code §17002, which states: “The principal place of administration of the trust is the usual place where the day-to-day activity of the trust is carried on by the trustee...” If jurisdiction cannot be decided under §17002(a), then subsection (b) states: “...the principal place of administration of the trust is the trustee’s residence or usual place of business.” According to the Petition, the trustee lives in Riverside County. Therefore, based on the facts, the Superior Court of Riverside County has jurisdiction.

TENTATIVE RULING #9:

THIS MATTER IS DROPPED FROM THE CALENDAR.

10.	23PR0292	MATTER OF KING REVOCABLE TRUST
Directing Trustee to Turn Over Possession of Real Property		

This Petition concerns a Trust executed by settlors who resided at a residential real property located in Sacramento County. The residence of the trustee and thus the principal place of administration of the Trust is in El Dorado County. There is currently an action ongoing in Sacramento County Superior Court to clear title and partition the real property (Case No. 23CV011491).

Petitioner filed this Petition in El Dorado Superior Court in order to prevent any claim that she is estopped from asserting her rights under Probate Code § 16061.8² for failing to bring an action to contest the issue of whether the real property is properly included among Trust assets.

Petitioner requests this court to stay this Petition pursuant to Probate Code § 854:

If a civil action is pending with respect to the subject matter of a petition filed pursuant to this chapter and jurisdiction has been obtained in the court where the civil action is pending prior to the filing of the petition, upon request of any party to the civil action, the court shall abate the petition until the conclusion of the civil action. This section shall not apply if the court finds that the civil action was filed for the purpose of delay.

The Objection filed by Trustee claims Petitioner failed to provide proper notice. Probate Code §851 requires service of notice pursuant to Probate Code §17203 here, because the matter involves a trust. The Court does not read §17203 as requiring personal service. The Notice of Hearing is lacking a description of the property at issue. However, it seems the Trustee received sufficient notice.

The Trustee further argues that the real property is a trust asset, as it is listed on the Schedule A and decedents executed a deed to transfer the property to the Trust. The Trustee further argues that she has a duty to administer the Trust subject to Probate Code §17200 and

² “A person upon whom the notification by the trustee is served pursuant to paragraph (1) of subdivision (a) of Section 16061.7, whether the notice is served on the person within or after the time period set forth in subdivision (f) of Section 16061.7, shall not bring an action to contest the trust more than 120 days from the date the notification by the trustee is served upon the person, or 60 days from the date on which a copy of the terms of the trust is delivered pursuant to Section 1215 to the person during that 120-day period, whichever is later.” Probate Code § 16061.8.

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to respond to litigation as Trustee, and therefore should be able to use trust assets for attorney's fees.

The matter was heard on January 29, 2024 where both parties presented argument, and the matter was continued to July 29, 2024.

TENTATIVE RULING #10:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 29, 2024, IN DEPARTMENT NINE.

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