

10-21-24
Dept. 9
Probate Tentative Rulings

1.	PP20210160	ESTATE OF JOHNSON
Status		

The last hearing occurred on October 23, 2023, where the Court advised the personal representative that a Petition for Final Distribution needed to be filed, and Notice of Hearing needed to be given.

A Petition for Final Distribution and related Notice of Hearing has still not been filed.

TENTATIVE RULING #1:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, OCTOBER 21, 2024, 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.

10-21-24
Dept. 9
Probate Tentative Rulings

2.	23PR0035	ESTATE OF STUART
Motion to be Relieved		

Counsel for the Respondents Christopher and Shannon Velazquez has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that there is an irreconcilable conflict between counsel and the clients, including a lack of communication.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the Defendants at their last known address and on counsel for Plaintiff was filed on July 22, 2024, and notice of hearing was filed on August 5, 2024.

A Mandatory Settlement Conference is currently scheduled on November 20, 2024, and a Trial Readiness Conference is scheduled for January 10, 2025. Trial is set for January 14, 2025. Those dates are listed in the proposed Order as required by California Rules of Court, Rule 3.1362(e).

TENTATIVE RULING #2:

ABSENT OBJECTION, THE MOTION IS GRANTED. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER (FORM MC-053) ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e).

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

3.	PP20180230	ESTATE OF RYAN
Sixth Accounting/Final Distribution		

Letters of Administration were issued on January 2, 2019, granting Petitioner full authority under the Independent Administration of Estates Act. A Final Inventory and Appraisal was filed on May 4, 2019; supplemental inventory and appraisals were filed on June 27, 2019, and September 8, 2023.

Proof of Service of Notice of the hearing on the Petition was filed on October 2, 2024. Sean Ryan, through his attorney Jarom Phipps, has filed a request for special notice in this proceeding and was provided notice.

Decedent died intestate, leaving a spouse and three adult children (Sheila, Kathy, and Sean). All assets of the estate were separate property. The surviving spouse assigned her 1/3 share of the estate equally to Sheila and Kathy. The proposed distribution is as follows: 2/9 to Sean Ryan, 7/18 to Sheila Sundberg, and 7/18 to Kathy Ryan.

Petitioner and her counsel request extraordinary fees in this case. Petitioner personal representative is a professional fiduciary who charges \$140 per hour. She spent 33.21 hours on what she states are services provided outside the scope of ordinary services in probate administration – including the sale of decedent’s mobile home, which was under contract multiple times before the sale concluded, and work on decedent’s wrongful death claims. Counsel charges \$450 per hour and spend 17.5 hours on services outside the scope of ordinary services in a probate, also involving decedent’s wrongful death claim, numerous Accountings and petitions for preliminary distribution.

The Petition does not comply with Local Rule 10.07.12. Per Local Rule 10.07.12 Petitions for final distribution must include a report of the following:

1. That no federal or California estate taxes are payable or that they have been paid;
2. That income taxes and all other taxes (e.g. supplemental real property taxes or personal property taxes, if any, have been paid or otherwise provided for.

If estate taxes are payable or paid: 1) the petition shall set forth whether said taxes were prorated pursuant to Probate Code section 20100, et seq., or the provisions of the will; and 2) the petition must reflect whether or not there are non-probate assets includable in the gross estate for estate tax purposes.

The Petition requests:

1. The administration of the estate be brought to a close;

10-21-24
Dept. 9
Probate Tentative Rulings

2. The Sixth Account be settled, allowed and approved;
3. All acts and proceedings of the personal representative be ratified, confirmed and approved;
4. The personal representative be authorized to pay herself statutory fees in the amount of \$4,792.47 and \$4,635.42 for compensation for extraordinary services;
5. The personal representative be authorized to pay statutory attorney fees in the amount of \$4,792.47 and \$7,875.00 for compensation for extraordinary services;
6. Approval of distribution of the estate to the persons entitled to it pursuant to the Petition for Final Distribution, specifics of distribution;
7. Distribution of the estate in Petitioner's hands and any other property of the estate not now known or later discovered be distributed to the beneficiaries as set forth in the Petition; and,
8. Upon filing of receipts and a Petition for Discharge that Petitioner may apply to be discharged and released from all liability that may be incurred hereafter.

TENTATIVE RULING #3:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, OCTOBER 21, 2024, IN DEPARTMENT NINE TO CONFIRM COMPLIANCE WITH LOCAL RULE 10.07.12. ABSENT OBJECTION THE PETITION WILL BE 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, OCTOBER 20, 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.

10-21-24
Dept. 9
Probate Tentative Rulings

4.	24PR0244	ESTATE OF FUREY
Spousal Property Petition		

Petitioner is the surviving spouse of decedent, who died intestate October 6, 2013, survived by Petitioner and three adult children. No petition to administer the estate has been filed.

Probate Code § 100(a) provides that “[u]pon the death of a person who is married or in a registered domestic partnership, one-half of the community property belongs to the surviving spouse and the other one-half belongs to the decedent.”

Probate Code § 6401(a) states: “As to community property, the intestate share of the surviving spouse is the one-half of the community property that belongs to the decedent under Section 100.”

Probate Code § 13500 provides that “when a spouse dies intestate leaving property that passes to the surviving spouse under Section 6401, . . . the property passes to the survivor . . . , and no administration is necessary.”

Probate Code 13650 authorizes a surviving spouse to file a petition requesting an order that administration of all or part of an estate is not necessary because all or part of the estate is property passing to the surviving spouse.

The Petition in this case identifies real property that is the subject of the Petition. Petitioner and the decedent bought the property on September 15, 2006, with title taken in their names, husband and wife as community property.

Notice of the hearing on the Petition was served on decedent’s children and proof of service was filed with the court on September 6, 2024.

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)

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

10-21-24
Dept. 9
Probate Tentative Rulings

5.	24PR0242	MATTER OF KEARNEY
Letters of Administration		

Decedent died intestate on July 3, 2024, survived by an ex-wife and two minor children and one adult child. Petitioner is decedent's ex-wife.

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

Bond to be fixed at \$525,000.00 and will be furnished by an admitted surety insurer or as otherwise provided by law.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on August 28, 2024.

Proof of service of notice of the hearing on the Petition was filed on October 1, 2024.

Proof of publication was filed on September 30, 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, OCTOBER 20, 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.

6.	24PR0253	MATTER OF SALEH
Approval of Compromise of Minor's Claim		

This is a Petition to compromise a minor's claim. Petitioner is the minor's father. The Petition states the minor sustained a chin injury and one broken front tooth resulting from an incident during P.E. class at school on April 23, 2024. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of \$22,779.15.

The Petition states the minor incurred \$7,825.15 in medical expenses that would be deducted from the settlement. Copies of invoices for the claimed medical expenses are not attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The Petition states that the minor has not fully recovered but is awaiting care for temporary injuries and has no permanent injuries. Specifically, he is awaiting an implant and braces. A doctor's report concerning the minor's condition and prognosis of recovery is attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).

The minor's attorney requests attorney's fees in the amount of \$3,000.00, which will be paid by Schools Insurance Authority and not deducted from the settlement.

With respect to the \$14,954.00 due to the minor, the Petition requests that they be deposited into an insured account with Wells Fargo, subject to withdrawal with court authorization. See attachment 18(b)(2), which includes the name and address of the depository, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(7).

The minor's presence at the hearing will be required in order for the court to approve the Petition. Local Rules of the El Dorado County Superior Court, Rule 7.10.12.D.

TENTATIVE RULING #6:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, OCTOBER 21, 2024, 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.

7.	24PR0249	PAGE LIVING TRUST
Appointment of Successor Trustee		

The Cherie J. Page Living Trust (“Trust”) was created on December 29, 1992, by Cherie Page. The initial successor Trustee was Silverrol Budd Fischer and the first alternate was Patricia Guidotti. Patricia died on May 7, 1996, and Silverrol died on February 29, 1999. Cherie Page (“decedent”) died on August 29, 2002.

The decedent is survived by two grandsons (sons of Patricia) and two nieces (Silverrol’s daughters). The decedent owns a 50% interest in real property and the other 50% is owned by her brother Silverrol’s trust. Petitioner is seeking to be appointed as successor Trustee of the Trust, so that the property can be sold and divided amongst the appropriate heirs. Per the terms of her Trust, Decedent’s 50% will be divided equally amongst her two grandsons.

Probate Code § 15660

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

(b) If the trust instrument provides a practical method of appointing a trustee or names the person to fill the vacancy, the vacancy shall be filled as provided in the trust instrument.

(d) If the vacancy in the office of trustee is not filled as provided in subdivision (b) or (c), on petition of any interested person or any person named as trustee in the trust instrument, the court may, in its discretion, appoint a trustee to fill the vacancy. If the trust provides for more than one trustee, the court may, in its discretion, appoint the original number or any lesser number of trustees. In selecting a trustee, the court shall give consideration to any nomination by the beneficiaries who are 14 years of age or older.

Decedent’s Trust provides that in the absence of a Trustee, the beneficiaries can agree on a successor Trustee. Based on the declarations attached, decedent’s grandsons agree with the appointment of Petitioner.

TENTATIVE RULING #7:

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)

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

10-21-24
Dept. 9
Probate Tentative Rulings

8.	23PR0073	MORGAN FAMILY TRUST
Petition		

On April 2, 1991, William H. Morgan (“Bill”) and Rexena W. Morgan (“Settlers”) established the William H. and Rexena W. Morgan Family Trust (“Trust”). Rexena died on April 19, 1991, and Bill died on September 6, 2021. Bill and Rexena are survived by their three adult children, Tammie, William, and Kristin, who are the remainder beneficiaries under the Trust.¹

When the Trust was executed, Bill and Rexena also executed pour-over Wills. The Trust states that after the death of the first spouse (Rexena), 50% of all community property owned by the Settlers shall be allocated to Trust A for the benefit of the surviving spouse (Bill), and the remaining 50% of the community property, along with any separate property of the deceased spouse, shall be allocated to Trust B. The benefit of Trust B is for the Settlers’ children after the second death.

On June 15, 2023, William was appointed sole Successor Trustee by the Court and on June 20, 2023, William was appointed as personal representative of Bill’s estate and was issued letters with full authority.

In August 2023, William took possession of the real property on Osborne Road. Kimberly had possession of the real property at the time of Decedent’s death and for 23 months afterwards, as well as all of the personal property, including Bill’s tools and equipment. On June 13, 2023, Kimberly stipulated to provide an inventory of all of Bill’s personal property, but no such inventory has been provided. As the parties stipulated, Kimberly is to be considered an omitted spouse and therefore is entitled to community property acquired during her marriage to Bill and 1/3 of Bill’s separate property estate. Petitioner is informed and believes that none of Bill’s personal property was acquired during his marriage to Kimberly, except items purchased with money Bill earned before his marriage to Kimberly, and therefore no community property exists for Kimberly to claim.

Petitioner has only been able to prepare an interim accounting and partial inventory, due to non-compliance by Kimberly. Of the property inventoried, Petitioner contends \$445,000 is properly characterized as community property of the settlers (Bill and Rexena) and \$135,000 was acquired by Bill subsequent to his marriage to Rexena (2010 Mercedes, 2010 Ford Dually, \$70,000 houseboat). Petitioner contends the \$135,000 of property was acquired with funds Bill

¹ At the time of his death, Bill was married to Kimberly Morgan (“Kimberly”), who survived him. He did not provide for Kimberly in any testamentary instrument, and the Trustee stipulated to Kimberly’s right to distribution as an omitted spouse under Probate Code §21610.

10-21-24
Dept. 9
Probate Tentative Rulings

earned before his marriage to Kimberly or by applying proceeds from sales of property Bill owned prior to his marriage to Kimberly, and therefore are separate property.

All required notices have been provided and it is Petitioner's information and belief that all necessary tax returns have been filed. The real property was sold after Kimberly vacated, after a Notice of Default was recorded due to Kimberly's failure to pay the mortgage for 22 months. The property was sold for \$465,000, which was enough to pay all secured obligations and all costs advanced by Petitioner. The sale also covered the settlor's state tax lien, other debt, and other unpaid property expenses.

The Trust estate also includes approximately \$165,240 which will be received from the administration of Rexena's father's estate. In addition to that, Petitioner also has claim to \$96.77 in unclaimed property held by the State Controller, and \$4.27 as the balance of a U.S. Bank account.

Petitioner alleges that Kimberly has responsibility for various debts. First, Bill and Kimberly could not afford their mortgage and in 2019, agreed to a loan modification where all accrued unpaid interest was added to outstanding principal of the first mortgage loan, and they agreed to pay \$321.08 each month in satisfaction of their mortgage escrow account to cover property taxes and insurance. The Loan Modification Agreement (exhibit 3) was executed by Bill and Kimberly. Petitioner argues that the mortgage debt and escrow account balance owing to Rushmore Lending Management Services constituted community debts of Bill and Kimberly. Bill also had a community debt of \$50,000 owed to a general contractor (S.E. Harrison, Inc.) for a lawsuit settlement in 2017, while Bill and Kimberly were married.² Lastly, for the 23 months that Kimberly resided at the Osborne property, she did not pay the mortgage, property taxes, water bills, or electricity bills. The mortgage balance increased by \$25,309.10 for accrued unpaid interest due, \$5,700+ for late fees and other charges for the nonjudicial foreclosure action, \$14,840.33 for unpaid escrow/impound charges for property taxes and insurance, \$11,142.77 for unpaid water bills, and \$6,807.85 for unpaid solar electricity bills. All debts were paid in escrow upon the sale of the property.

Rexena's inheritance from her father's estate is held subject to the specific disposition of Trust B, which provides for 25% to Tammie Morgan, 37 ½% to William S. Morgan, and 37 ½% to Kristin Morgan Goree. Petitioner argues that the Osborne property should be treated as an asset of the Trust and should be deemed distributed in satisfaction of Kimberly's rights as an omitted spouse.

The Petition requests:

1. That the Trustee is entitled to compensation totaling \$9,878.00;

² The settlement was for \$50,000 but after making initial payments, Bill defaulted, and the remaining debt was \$42,000.

10-21-24
Dept. 9
Probate Tentative Rulings

2. That counsel for Petition be entitled to compensation, in accordance with his supplemental declaration;
3. That the entire balance of funds held by Trustee be distributed in accordance with ¶14 on page 11 of the Petition;
4. That distribution of the real property at 2850 Osborne Road, Cameron Park, be confirmed to Kimberly Morgan, the settlor's surviving spouse; and,
5. That Kimberly Morgan be ordered to inventory and account for all of Bill Morgan's assets in her possession and control at his death.

The Court did not receive a supplemental declaration by counsel regarding attorney's fees. This case was called on September 16, 2024, and counsel for Petitioner did not make an appearance until after the case was called and continued. The Court has still not received any supplemental declaration.

TENTATIVE RULING #8:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, OCTOBER 21, 2024, 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.

10-21-24
Dept. 9
Probate Tentative Rulings

9.	24PR0237	ESTATE OF HARRIS JR.
Letters Testamentary		

Decedent died testate on December 23, 2023, survived by a spouse and adult child. Petitioner is decedent's son.

The Petition does not indicate whether Petitioner requests full or limited authority under the Independent Administration of Estates Act.

Helen M. Harris, decedent's surviving spouse, was named as Executor in the Will. The Will waives bond. Helen Harris filed an objection.

There is no Duties/Liabilities statement (DE 147/DE 147s) on file with the court, as required by Probate Code § 8404.

There is no complete proof of service of notice of the Petition on file with the court, as required by Probate Code § 8110.

There is no proof of publication on file with the court, as required by Probate Code §§ 8120, 8121.

The portion of decedent's Will that was filed with the Court indicates that Helen Harris is nominated as Executor, and the distribution of the estate is to decedent's Trust. Based on his handwritten notes, Petitioner seems to be challenging the acts of Executor/Trustee. This is not a proper Petition.

TENTATIVE RULING #9:

PETITION DENIED.

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

10.	24PR0248	MCKEE REVOCABLE TRUST
Petition to Claim Trust Property		

Petitioner is the trustee of the Sharon R. McKee Revocable Trust (the "Trust"). The Trust was established on April 5, 2013, and was amended on April 11, 2013, April 23, 2015, July 8, 2016, August 8, 2018, September 12, 2018, October 28, 2022, November 21, 2022, and December 2, 2022. Sharon McKee was the settlor and trustee until she died on December 28, 2022. Susan Maxine Gutierrez was nominated to act as trustee but resigned, and Kathryn E. Cain (Petitioner) became the currently acting trustee.

The Petition requests that certain bonds and a bank account owned by decedent not be subject to probate, and that they become assets of the Trust. The language of the Trust indicates that it was decedent's intention that her assets be owned by her Trust. She also executed a General and Specific Transfer which further indicates this intention. Lastly, decedent executed a pour over Will giving all of her property to her Trust. Some of the bonds had pay-on-death beneficiaries designated, but all of those beneficiaries predeceased the decedent. Some of the bonds are held in the name of decedent's mother, Dorothea Rose McKee, with decedent named as the beneficiary. However, during her lifetime, decedent did not effectuate a transfer of these bonds. Decedent owned one bank account as a joint tenant, but the other joint tenant died before decedent.

Probate Code § 850 permits a trustee who has a claim to property, the title to or possession of which is held by another, to file a petition requesting that the court make an order pursuant to Probate Code § 856 authorizing and directing the person having title to or possession of real property to execute a conveyance or transfer to a person entitled thereto, or granting other appropriate relief. Probate Code § 851 requires the Petitioner to serve notice of the hearing and a copy of the Petition at least 30 days prior to the hearing to each person claiming an interest in or having title to or possession of the property. When the matter concerns a decedent estate, notice shall also be given to any heir or devisee whose interest may be affected by the Petition in accordance with Probate Code § 1200.

Probate Code § 857 provides that in the event that the court issues such an Order:

(a) The order is prima facie evidence of the correctness of the proceedings and of the authority of the personal representative or other fiduciary or other person to make the conveyance or transfer.

(b) After entry of an order that the personal representative, other fiduciary, or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms

10-21-24
Dept. 9
Probate Tentative Rulings

of the order as if the property had been conveyed or transferred in accordance with the terms of the order.

* * *

Notice of the hearing and a copy of the Petition were mailed at least 30 days prior to the hearing, to each person claiming an interest in or having title to or possession of the property, as well as any heir or devisee whose interest may be affected by the Petition. The notice and Petition were mailed on September 11, 2024, and filed on September 13, 2024.

Pursuant to Probate Code §850 and *Estate of Heggstad* (1993) 16 Cal.App. 4th 943, 947-950, the Court finds sufficient evidence that decedent intended the above-mentioned assets be part of the Trust.

TENTATIVE RULING #10:

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)

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