

1. ESTATE OF CLARK PP-20150106**(1) 1st and Final Account.****(2) OSC Re: Termination of Administration.**

Jacob Maker as personal representative of the Estate of Mary Clark, case number PP-20150237, filed a petition for determination as to who is entitled to distributions from the Estate of Albert Clark. The personal representative of Estate of Albert Clark contended that the term “heirs at law” as used in the will admitted to probate in the instant case does not include Mary Clark, the spouse of Albert Clark, and that it was intended to only refer to blood relations of Albert Clark, other than personal representative Lisa Radcliff who was excluded from the heirs at law entitled to distribution. The personal representative of the Estate of Mary Clark contended that the words are to be construed as to their ordinary meaning as stated in Probate Code, §§ 44 and 6401, leaving the sole intestate heir at law the surviving spouse, Mary Clark.

A court trial on the petition was held on January 4, 2018. The court issued its ruling on the petition on January 11, 2018 finding that the term “heirs at law” as used in Albert Clark’s will means blood relatives. The personal representative of Albert Clark was directed to prepare the order on the petition. The order was entered on July 11, 2018.

At the review hearing re: status of administration on December 11, 2019 the court set a hearing for June 10, 2020, ordered the personal representative to show cause why termination of administration should not take place, and directed the personal representative to file a statement regarding potential termination. The personal representative’s counsel appeared at the hearing on June 10, 2020 and requested a six month continuance, which was granted. At the December 9, 2020 hearing the parties requested another continuance of the hearing and the matter was continued to June 9, 2021.

At the June 9, 2021 hearing counsel advised the court that the estate's real property had been sold and the hearing was continued to September 15, 2021.

The petition for Settlement of the 1st and Final Account and for distribution was filed on July 19, 2021. There were deficiencies that needed to be corrected. The hearing was continued to 8:30 a.m. on Wednesday, October 20, 2021 in Department Eight. The corrected petition for Settlement of the 1st and Final Account and for distribution was filed on October 8, 2021.

Paragraph 23 of the corrected petition states the names and addresses of the eight beneficiaries entitled to notice. The proof of service of notice of the hearing filed on October 8, 2021 is fatally deficient as it does not state that the petition and the notice of hearing were served on beneficiaries Catherine Ostrum Fogelman, Robert Merrill Ostrum, Karen Ostrum George, and Anne Ostrum Moursand.

The 2nd corrected proof of service filed on November 29, 2021 declares that notice of the hearing and a copy of the 2nd corrected petition for Settlement of the 1st and Final Account and for distribution were served by mail on nearly all of the interested parties on November 24, 2021.

The 2nd Corrected petition for Settlement of the 1st and Final Account and for distribution states in paragraph 11 that no creditor claims were filed. Two claims were filed by the Department of Health Care Services (DCHS) on June 25, 2015. DCHS also filed a request for special notice on that date. The two rejections of the claims were filed on May 27, 2016. The 2nd corrected proof of service does not declare that notice of this proceeding and copy of the petition for Settlement of the 1st and Final Account and for distribution were served on DCHS and the petition does not explain whether DCHS filed an action to recover on the two rejected creditor' claims. This needs to be addressed.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 15, 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.eldoradocourt.org/online services/vcourt.html.

2. ESTATE OF PIERROZ PP-20210058

Review Hearing Re: Inventory and Appraisal.

Letters of Administration with Will Annexed were issued on August 25, 2021. There is no Final Inventory and Appraisal in the court's file.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 15, 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.eldoradocourt.org/oneservices/vcourt.html.

3. ESTATE OF CARTER PP-20200059

Review Hearing Re: Status of Administration.

TENTATIVE RULING # 3: THE OCTOBER 6, 2021 ORDER OF FINAL DISTRIBUTION HAVING ORDERED THAT THE REMAINING ASSETS CONSISTING OF CASH BE DISTRIBUTED TO THE PERSONAL REPRESENTATIVE AS THE SOLE HEIR OF THE ESTATE, THIS REVIEW HEARING IS DROPPED FROM THE CALENDAR.

4. ESTATE OF SCHOTT PP-20210134

Review Hearing Re: Inventory and Appraisal.

Letters Testamentary were issued on August 25, 2021. 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, DECEMBER 15, 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.eldoradocourt.org/online services/vcourt.html.

5. ESTATE OF GREEN PP-20200163

Review Hearing Re: Status of Administration.

Letters of Administration were issued on February 5, 2021. The Final Inventory and Appraisal was filed on February 25, 2021. There is no Final Account and Request for Order of Final Distribution in the court's file.

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 15, 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.eldoradocourt.org/online services/vcourt.html.

6. ESTATE OF HUDSON PP-20210116

Review Hearing Re: Inventory and Appraisal.

TENTATIVE RULING # 6: THE FINAL INVENTORY AND APPRAISAL HAVING BEEN
FILED ON MAY 19, 2021, THIS MATTER IS DROPPED FROM THE CALENDAR AS MOOT.

7. ESTATE OF GORDON PP-20200222

Review Hearing Re: Inventory and Appraisal.

Letters of Administration were issued on February 10, 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 15, 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.eldoradocourt.org/online services/vcourt.html.

8. ESTATE OF TAYLOR PP-20210063

(1) Review Hearing Re: Inventory and Appraisal.

(2) Final Account and Petition for Order of Final Distribution.

Review Hearing Re: Inventory and Appraisal.

The Final Inventory and Appraisal having been filed on September 27, 2021, the Review Hearing Re: Inventory and Appraisal is dropped from the calendar as moot.

Final Account and Petition for Order of Final Distribution.

The verified petition to administer the estate states in paragraph 9 that one of decedent's daughters, Sunnie (Ruth?) Griffith, resided in California, while the Final Account and Petition for Final Distribution lists Ruth Griffith with an address in Nevada as an intestate heir entitled to notice. The difference in first name and difference in addresses needs to be explained.

TENTATIVE RULING # 8: THE FINAL INVENTORY AND APPRAISAL HAVING BEEN FILED ON SEPTEMBER 27, 2021, THE REVIEW HEARING RE: INVENTORY AND APPRAISAL IS DROPPED FROM THE CALENDAR AS MOOT. APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 15, 2021 IN DEPARTMENT EIGHT REGARDING THE FINAL ACCOUNT AND PETITION FOR ORDER OF FINAL DISTRIBUTION. 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/online services/vcourt.html.

9. ESTATE OF KOCMICH PP-20180237**Review Hearing Re: Status of Administration.**

At the hearing on October 28, 2020 the court allowed, settled, approved and confirmed the 1st and final account and ordered final distribution. The order of final distribution was not entered, because a proposed order was not in the court's file. A status report filed by the personal representative on February 19, 2021 stated that tenants have been given a 30 day notice to vacate and the estate should be in escrow by the end of April at the latest with the final account and distribution submitted once the home is vacated and sold.

On July 30, 2021 another status report was filed, which explained that while the real property is now vacant, it is currently undergoing repairs and cleaning, it was anticipated the property will be placed on the market in September 2021, and the personal representative essentially requested the hearing be continued to October 2021. The August 4, 2021 hearing was continued to October 20, 2021.

The personal representative filed a status report on October 12, 2021, which stated they were awaiting a final inspection report on the estate's real property before the property can be listed and it was anticipated the estate was just a few weeks from selling the real property. The personal representative requested that the personal representative be allowed until early December to finalize the accounting. The October 20, 2021 hearing was continued to December 15, 2021.

TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 15, 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.eldoradocourt.org/online services/vcourt.html.

10. ESTATE OF DOLCINI PP-20210067

Review Hearing Re: Inventory and Appraisal.

TENTATIVE RULING # 10: THE FINAL INVENTORY AND APPRAISAL HAVING BEEN FILED ON NOVEMBER 16, 2021, THE REVIEW HEARING RE: INVENTORY AND APPRAISAL IS DROPPED FROM THE CALENDAR AS MOOT.

11. ESTATE OF KELLER PP-20210139

Review Hearing Re: Inventory and Appraisal.

Letters of Administration were issued on August 25, 2021. There is no Final Inventory and Appraisal in the court's file.

TENTATIVE RULING # 11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 15, 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.eldoradocourt.org/online services/vcourt.html.

12. ESTATE OF COMBELLACK PP-20210079

Final Account and Report and Petition for Final Distribution.

TENTATIVE RULING # 12: THE PETITION IS GRANTED. THE 1ST AND FINAL ACCOUNT IS ALLOWED, SETTLED, APPROVED AND CONFIRMED. FEES ARE FIXED AND PAYMENT ALLOWED AS REQUESTED. FINAL DISTRIBUTION IS ORDERED AS REQUESTED. THE COURT CONFIRMS THE REVIEW HEARING RE: STATUS OF ADMINISTRATION SET FOR 8:30 A.M. ON WEDNESDAY, JUNE 29, 2022 IN DEPARTMENT EIGHT AT WHICH TIME THE COURT ANTICIPATES THAT THE RECEIPT OF FINAL DISTRIBUTION EXECUTED BY THE TRUSTEE OF TRUST A, A SUBTRUST OF THE ROBERT AND JUNE RILEY TRUST, WILL HAVE BEEN FILED AND AN EX PARTE PETITION FOR FINAL DISCHARGE (JUDICIAL COUNCIL FORM DE-295.) SUBMITTED.

13. ESTATE OF OLMSTEAD PP-20190077

Review Hearing Re: Status of Administration.

Letters of Administration were issued on June 19, 2019. The Final Inventory and Appraisal was filed on August 29, 2019. On December 7, 2020 the Franchise Tax Board filed a creditor's claim in the amount of \$23,724.40 and a request for special notice,

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

TENTATIVE RULING # 13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 15, 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.eldoradocourt.org/onlineservices/vcourt.html.

14. ESTATE OF EVANS PP-20210015

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

TENTATIVE RULING # 14: THE PETITION IS GRANTED. FEES ARE FIXED AND PAYMENT ALLOWED AS REQUESTED. FINAL DISTRIBUTION IS ORDERED AS REQUESTED. INASMUCH AS THE SOLE BENEFICIARY ENTITLED TO FINAL DISTRIBUTION IS ALSO THE PERSONAL REPRESENTATIVE AND THERE IS NO REAL PROPERTY BEING DISTRIBUTED, THE COURT ORDERS VACATED THE APRIL 13, 2022 REVIEW HEARING RE: STATUS OF ADMINISTRATION.

15. ESTATE OF MORRISON PP-20210185

Amended Spousal Property Petition.

TENTATIVE RULING # 15: ABSENT OBJECTIONS OR OPPOSITIONS, THE PETITION IS GRANTED.

16. ESTATE OF KING PP-20200112

Review Hearing Re: Status of Administration.

Letters of Administration were issued on September 23, 2020. The Final Inventory and Appraisal was filed on June 21, 2021 and corrected Final Inventory and Appraisal was filed on September 13, 2021.

The personal representative's counsel reported prior to the September 22 2021 hearing that after the corrected Final Inventory and Appraisal was filed, the Final Account and Report will be filed and requested a three month continuance. The court continued the hearing to December 15, 2021.

The Corrected Final Inventory and Appraisal # 2 was filed on September 29, 2021.

The petition for Final Distribution is set for hearing at 8:30 a.m. on Wednesday, February 2, 2022 in Department Eight.

TENTATIVE RULING # 16: THIS MATTER IS CONTINUED TO 8:30 A.M. ON WEDNESDAY, FEBRUARY 2, 2022 IN DEPARTMENT EIGHT.

17. ESTATE OF WALZ PP-20110054

(1) Review Hearing Re: Status of Administration.

(2) Review Hearing Re: Inventory and Appraisal.

The petition for issuance of Letters of Administration to a successor personal representative was granted on March 16, 2016. The Letters of Administration were issued on July 27, 2016.

At the hearing on October 13, 2021 the court granted counsel's request for continuance.

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

TENTATIVE RULING # 17: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 15, 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.eldoradocourt.org/online services/vcourt.html.

18. ESTATE OF STAPLES PP-20190139

Review Hearing Re: Status of Administration.

The amended order of final distribution was entered on July 7, 2021. There are no receipts 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.

TENTATIVE RULING # 18: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 15, 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.eldoradocourt.org/online services/vcourt.html.

19. MATTER OF MIKKOLA 21PR0011

Petition to Determine Succession to Real Property.

TENTATIVE RULING # 19: THE PETITION IS GRANTED.

20. MATTER OF THE LARRY AND MARSHA FISTOLERA TRUST PP-20210199

Petition to Appoint Successor Co-Trustee, to Exonerate Successor Co-Trustee from Liability, to Approve Trustee Fees, to Modify Provisions of the Trust, and to Approve Sub-Trust Funding.

The successor trustee of the Trust petitions for the following court orders: appointing Wells Fargo Bank as successor co-trustee of the Exemption and Marital sub-trusts; directing that no bond be posted by Wells Fargo Bank; exonerating Wells Fargo Bank from any liability for any acts of any prior trustees; approving the schedule of trustee fees paid to Wells Fargo Bank as successor trustee of the two sub-trusts; approving the modification of the terms of the Trust at Article VI, paragraph D to authorize non-fractional funding of the Exemption and Marital sub-trusts; and approving petitioner's proposed allocations.

The proof of service declares that on September 7, 2021 notice of the hearing and the petition were served by mail to the interested parties, including Well Fargo Bank.

There were no oppositions or objections to the petition in the court's file at the time this ruling was prepared.

- Successor Co-Trustee

"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).)

"There is a vacancy in the office of trustee in any of the following circumstances: ¶ (c) The trustee resigns or is removed...." (Probate Code, § 15643(c).)

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

“If the 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.” (Probate Code, § 15660(b).)

“If the vacancy in the office of trustee is not filled as provided in subdivision (b) or (c), on petition of any interested person or any person named as trustee in the trust instrument, the court may, in its discretion, appoint a trustee to fill the vacancy. If the trust provides for more than one trustee, the court may, in its discretion, appoint the original number or any lesser number of trustees. In selecting a trustee, the court shall give consideration to any nomination by the beneficiaries who are 14 years of age or older.” (Probate Code, § 15660(d).)

The Trust instrument provides that the settlors shall act as co-trustees of the Trust; in the event that one of them shall fail to act for any reason, the other can continue as sole trustee; and should both of the settlors fail to act as trustee for any reason, Eric White, the petitioner, shall act as trustee. (Petition, Exhibit A – Trust Instrument, Article XIV, paragraph A.) The petition alleges: the Family Trust is funded with assets that require time consuming and complex administration; the assets includes 20 real properties that are income producing, and at least 14 banking, checking, savings, investment, and brokerage accounts at various institutions; settlor Larry Fistolera passed away in March 2018; settlor Marsha Fistolera's resigned as trustee of the Family Trust in September 2018; and she also resigned as trustee of the Survivor's Trust in January 2020 after having named Gerry White and Wells Fargo Bank as co-trustees of the Survivor's Trust pursuant to her powers over that Trust; it is Eric White's and surviving settlor Marsha Fistolera's desire that Wells Fargo be appointed to act as co-trustee of

the two subject subtrusts along with Eric White; Gerry White and Wells Fargo Bank have consented to act as co-trustees of the Survivor's sub-trust; and Wells Fargo Bank has consented to act as co-trustee of the Exemption and Marital sub-trusts. (Petition, paragraphs 3, 4, 7, 9, 10, 13, and 25.)

Absent objections or opposition, it appears appropriate to grant the request to appoint Wells Fargo Bank as co-trustee of the Marital and Exemption sub-trusts with the Bank's consent.

- Trustee Bond Requirement

"A trust company may not be required to give a bond, notwithstanding a contrary provision in the trust instrument." (Probate Code, § 15602(e).)

"'Trust company' means an entity that has qualified to engage in and conduct a trust business in this state." (Probate Code, § 83.)

"...Entities that may qualify to conduct a trust business in this state include state chartered commercial banks (see Fin.Code §§ 107, 1500.1) and national banking associations (see Fin.Code §§ 1502, 1503), corporations authorized to conduct a trust business (see Fin.Code § 107), trust departments of title insurance companies (see Fin.Code §§ 107, 1501; Ins.Code §§ 12392, 12393, 12395), and state and federal savings and loan associations (see Fin.Code §§ 5102, 6515). See also Fin.Code § 106 ("trust business" defined). Whether an entity has qualified to engage in and conduct a trust business in this state depends on other law. In order to fall within the definition of "trust company" in Section 83, a corporation, association, or other entity must satisfy the requirements of state or federal law that apply to the particular type of entity." (Emphasis added.) (Law Revision Commission Comments to Probate Code, § 83.)

Absent objections or opposition, it appears appropriate to order that co-trustee Wells Fargo Bank, N.A. need not post a bond.

- Funding Marital and Exemption Sub-Trusts

The petitioning successor trustee argues that it is unlikely due to the size of decedent Larry Fistolera's net estate that a marital trust will need to be funded, however, if it needs to be funded, it be more efficient and cost effective for trust administration to fund it with cash, liquid assets or assets the trustee believes may be more easily administered in a sub-trust, rather than funding it with fractional portions of assets as provided in Article VI, paragraph D. of the Trust instrument.

A trustee or beneficiary may petition the court to approve or direct the modification or termination of the trust. (Probate Code, § 17200(b)(13).)

"On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust. In this case, 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." (Probate Code, § 15409(a).)

The verified petition alleges: the marital trust will consist of the smallest fractional share of the estate that will entirely eliminate or reduce to the maximum possible extent any federal estate at the death of the deceased spouse (Petition, Exhibit A – Trust Instrument, Section VI, paragraph D.); in general, petitioner's proposed preliminary allocation is pro-rata, however, it will allow settlor Marsha Fistolera to keep her residence in the survivor's trust thereby allowing her to later sell it and still receive her \$250,000 home sale exclusion, and allowing the gift of a second residence to Craig White pursuant to her estate plan which has already been distributed; under the proposed allocation, the Exemption Trust will receive more liquid assets to equalize the value of settlor Marsha Fistolera's residence and the value of the other

residence where Craig White resides, which is not detrimental to the remainder beneficiaries of the Marital and Exemption Trusts; the preliminary allocation plan (Petition Exhibit C.) will be updated when subtrust funding occurs to base the allocation on the then-current values of the Trust assets, however, due to most assets being allocated pro-rata, it will not change the allocation significantly; the Marital Trust will not likely be required to be funded as the net estate is less than Larry Fistolera's lifetime unified credit amount; if funding is required, it is estimated that less than 1% of the assets will fund the subtrust, providing no benefit to the remainder beneficiaries; the fractional allocation is unduly cumbersome and result in a needlessly complex and expensive administration, making it impractical to use; should the Marital subtrust be funded, the purpose of the trustors' estate planning, such as swift and easy trust administration with the least amount of administrative costs and expenses possible, will be defeated; and the proposed allocation will streamline the administration process now and after the surviving trustor dies. (Petition, paragraphs 44-50.)

Absent objections or opposition, it appears appropriate to grant the request to modify the trust provisions related to the funding of the Marital subtrust and Exemption subtrust.

- Exoneration of Liability for Acts of Prior Trustees

Article XIV, paragraph F of the Trust Instrument provides: "...no trustee shall be liable or responsible for any act, omission, or default of any other trustee. No successor trustee shall be liable for any act, omission, or default of a predecessor trustee..."

"(a) Except as provided in subdivision (b), a successor trustee is not liable to the beneficiary for a breach of trust committed by a predecessor trustee. ¶ (b) A successor trustee is liable to the beneficiary for breach of trust involving acts or omissions of a predecessor trustee in any of the following circumstances: ¶ (1) Where the successor trustee knows or has information from which the successor trustee reasonably should have known of a situation constituting a breach

of trust committed by the predecessor trustee and the successor trustee improperly permits it to continue. ¶ (2) Where the successor trustee neglects to take reasonable steps to compel the predecessor trustee to deliver the trust property to the successor trustee. ¶ (3) Where the successor trustee neglects to take reasonable steps to redress a breach of trust committed by the predecessor trustee in a case where the successor trustee knows or has information from which the successor trustee reasonably should have known of the predecessor trustee's breach. ¶ (c) The liability of a trustee for acts or omissions of a predecessor trustee that occurred before July 1, 1987, is governed by prior law and not by this section." (Probate Code, § 16403.)

The verified petition states: settlor Marsha Fistolera acted as a de facto trustee with the help of Gerry White in administering the Trust; Marsha Fistolera prepared the Estate Tax return, prepared the initial allocation of assets, directed estate administration, and managed all real properties and other assets; although Wells Fargo Bank consents to act as a successor co-trustee, as a matter of routine with corporate trustees, Wells Fargo asks for a court order exonerating it from all liability for any acts, omissions, or default of any prior trustees up through the funding of the subtrusts and Well Fargo Bank's acceptance of the trusteeship; it would be too time consuming and expensive for Wells Fargo Bank to review all prior acts of prior trustees in order to determine if steps need to be taken to redress a breach of trust committed by the predecessor trustee; and the prior administration appears to be in good order. (Petition, paragraph 35.)

Absent objections or opposition, it appears appropriate to grant the request.

- Wells Fargo Bank Compensation

Petitioner seeks a court order authorizing co-trustee Bank of America be paid its standard fee schedule as a reasonable fee as allowed by the terms of the Trust.

“In determining or approving compensation of a trustee, the court may consider, among other factors, the following: ¶ (1) The gross income of the trust estate; ¶ (2) The success or failure of the trustee's administration; ¶ (3) Any unusual skill, expertise, or experience brought to the trustee's work; ¶ (4) The fidelity or disloyalty shown by the trustee; ¶ (5) The amount of risk and responsibility assumed by the trustee; ¶ (6) The time spent in the performance of the trustee's duties; ¶ (7) The custom in the community where the court is located regarding compensation authorized by settlors, compensation allowed by the court, or charges of corporate trustees for trusts of similar size and complexity; and ¶ (8) Whether the work performed was routine, or required more than ordinary skill or judgment.” (Rules of Court, Rule 7.776.)

Article XIV, paragraph E of the Trust instrument provides that the trustees are authorized to pay themselves reasonable compensation from time to time without prior court order. (Petition, Exhibit A – Trust Instrument, Article IV, paragraph E.)

As stated earlier in this ruling, the petition alleges: the Family Trust is funded with assets that require time consuming and complex administration; and the assets includes 20 real properties that are income producing, and at least 14 banking, checking, savings, investment, and brokerage accounts at various institutions. (Petition, paragraphs 3 and 4.)

The verified petition states: Wells Fargo Bank is a national banking association that has the expertise to administer the various assets of the subtrusts and assumes a high level of risk and responsibility for the assets in those subtrusts; administration will require a large amount of time and effort due to the nature of the numerous income producing real properties and other Trust assets; and Wells Fargo Bank proposes to pay itself compensation as outlined in its standard fee schedule attached as Exhibit B. (Petition, paragraphs 40 and 41.)

Absent objections or opposition, under the circumstances presented, it appears appropriate to determine that the Wells Fargo Bank standard fee schedule amounts to reasonable compensation for its anticipated services as co-trustee.

TENTATIVE RULING # 20: ABSENT OBJECTIONS OR OPPOSITION, THE PETITION IS GRANTED.

21. MATTER OF THE CAROLYN E. OLIVER LIVING TRUST PP-20210204

Petition for Order Confirming Successor Trustee and Trust Assets.

Petitioner seeks a court order determining that certain real property is an asset of the Trust.

The verified petition states: petitioner is the successor trustee of the Trust; the trustor passed away on June 21 2021; the trustor created the subject Trust by declaration of Trust executed on July 3, 2012, which had been drafted through “Legal Zoom”; the trustor’s former residence in Napa County was listed as a Trust asset in schedule A of the Trust (See Petition, Exhibit A.); when the Trust instrument was created there was an error made in filling out the online forms, which resulted in a provision that the house was to be distributed to petitioner when, in fact, trustee intended to leave her home to her three sons in equal shares; the petitioner intends to carry out that intent; a few years before the trustor passed away, she advised petitioner that she should update her original Trust documents to include her new home located in El Dorado County; while the updated Trust instrument was prepared, which named her three sons as beneficiaries entitled to distribution of the new house and included a schedule A that listed the decedent’s new El Dorado County residence as a Trust asset, the trustor never executed the document; and decedent failed to have prepared and executed a pour-over will (See Petition, page 7, lines 1-5.).

Citing Estate of Heggstad (1993) 16 Cal.App.4th 943, petitioner argues that the court should determine that the new home in El Dorado County is an asset of the Trust and should be excluded from administration of decedent’s probate estate.

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 of 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(a)(3), 851(b)(3) and 17203(a).)

The person holding formal title to the property is the deceased trustor and the trustee is the petitioner.

The proof of service filed on September 30, 2021 declares that notice of the hearing and the petition were served by mail on the interested persons by mail on September 28, 2021. There were no objections or oppositions in the court’s file at the time this ruling was prepared.

“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 executed by the trustor/settlor 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.)

However, a declaration that one holds his or her own real property in Trust must still satisfy the statute of frauds with a written declaration executed by the trustor. The appellate court opinion in Heggstad, supra, stated: "...comment b to section 40 (statute of frauds) establishes that a written declaration of trust, by itself, is sufficient to create a trust in the property. Comment b states: "*Methods of creation of trust*. The Statute of Frauds is applicable whether a trust of an interest in land is created *by the owner's declaring himself trustee*, or by a transfer by him to another in trust." (Second emphasis added.) [FN 6.] ¶ FN6. Section 40 states: "(1) If by statute it is provided that all declarations or creations of trusts of land shall be manifested and proved by some writing signed by the party who is by law enabled to declare such a trust, or by his last will in writing, or else they shall be utterly void and of none effect, the rules stated in §§ 41–52 are applicable. [¶] (2) A statute containing such a provision is in this Chapter referred to as the Statute of Frauds."

Heggstad, supra, stands for the proposition that the Trustor/Settlor satisfies the statute of frauds by declaring in writing that he or she holds real and/or personal property subject to the Trust instrument without formally recording a deed conveying title to the Trust and/or formally changing title to personal property. The court is not presented with that situation. There is no evidence that the trustor ever executed a written document declaring she held her new home in El Dorado County in the Trust. While there may have been an intent to do so, there is no writing satisfying the Statute of Frauds executed by the decedent trustor that stated she held the new residence as an asset of the Trust.

The petition is denied.

TENTATIVE RULING # 21: THE PETITION IS DENIED.

22. MATTER OF THE GARY HARVEY FAMILY POT TRUST 21PR0007

Petition for Instructions.

The trustee of the Gary Harvey Family Pot Trust (Trust) petitions for instructions concerning the following matters: construe the Trust to determine the current beneficiaries of the Trust; and to instruct that the trustee is authorized to resume payments to Bernice Harvey as a beneficiary under the terms of the Trust and to make payments to the IRS equal to any payment made to or on behalf of Bernice Harvey pursuant to the partial release of levy against Bernice Harvey's interest.

"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: ¶ * * * (6) Instructing the trustee..." (Probate Code, § 17200(b)(6).)

Proceedings concerning the internal affairs of the trust include, but are not limited to, determining questions of construction of a trust instrument. (Probate Code, § 17200(b)(1).)

"At least 30 days before the time set for the hearing on the petition, the petitioner shall cause notice of hearing to be mailed to all of the following persons: ¶ (1) All trustees. ¶ (2) All beneficiaries, subject to Chapter 2 (commencing with Section 15800) of Part 3. ¶ (3) The Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General." (Probate Code, § 17203(a).)

"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.)

While the petition lists the names of the interested potential beneficiaries of the Pot Trust in paragraph 7, their addresses are not stated. Therefore, the court is unable to determine from the proof of service whether the notice of hearing and petition were served on these parties by mail to their correct addresses. This needs to be remedied.

"At least 30 days before the time set for hearing on the petition, the petitioner shall cause notice of the hearing and a copy of the petition to be served in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure on any person, other than a trustee or beneficiary, whose right, title, or interest would be affected by the petition and who does not receive notice pursuant to subdivision (a). The court may not shorten the time for giving notice under this subdivision." (Probate Code, § 17203(b).)

The IRS is entitled to notice of this proceeding in that the court's ruling on the petition will affect its interest in collecting on the taxes due and payable from beneficiary Bernice Harvey's distributions.

The proof of service declares that notice of the hearing and the petition were served by mail to the IRS. (Emphasis the court's.) The IRS is entitled to notice in the same manner as a summons and complaint. Proof of service by mail alone is insufficient.

Current Beneficiaries of the Gary Harvey Family Pot Trust

“It is now well settled that no matter how clear and unambiguous language may appear to the reader, extrinsic evidence is admissible for the purpose of ascertaining what was meant by the person using the words in question. (*Delta Dynamics, Inc. v. Arioto* (1968) 69 Cal.2d 525, 72 Cal.Rptr. 785, 446 P.2d 785; *Estate of Russell* (1968) 69 Cal.2d 200, 70 Cal.Rptr. 561, 444 P.2d 353; *Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 69 Cal.Rptr. 561, 442 P.2d 641.) The extrinsic evidence, however, may not show that what was meant by the words used was something to which, under all of the circumstances, the words are not reasonably susceptible.” (*Levy v. Crocker-Citizens Nat. Bank* (1971) 14 Cal.App.3d 102, 104.)

“In interpreting a document such as a trust, it is proper for the trial court in the first instance and the appellate court on de novo review to consider the circumstances under which the document was made so that the court may be placed in the position of the testator or trustor whose language it is interpreting, in order to determine whether the terms of the document are clear and definite, or ambiguous in some respect. (*Estate of Russell* (1968) 69 Cal.2d 200, 208-210, 70 Cal.Rptr. 561, 444 P.2d 353.) Thus, extrinsic evidence as to the circumstances under which a written instrument was made is admissible to interpret the instrument, although not to give it a meaning to which it is not reasonably susceptible. (Id. at p. 211, 70 Cal.Rptr. 561, 444 P.2d 353.) On review of the trial court's interpretation of a document, the appellate court's proper function is to give effect to the intention of the maker of the document. (Id. at p. 213, 70 Cal.Rptr. 561, 444 P.2d 353.)” (*Wells Fargo Bank v. Marshall* (1994) 20 Cal.App.4th 447, 453.)

The Betty J. Harvey 1992 Trust instrument provision related to the Gary Harvey Family Pot Trust directs: upon the death of settlor, one-half of the Trust assets are to be retained in trust

and managed as the Gary Harvey Family Pot Trust for the benefit of Gary Harvey, his spouse, and his then living issue on the basis of representation, except that Shea Harvey and his issue are specifically disinherited, and shall have predeceased the settlor for all purposes of this instrument; the Pot Trust is to be administered for the benefit of Gary Harvey, his spouse, and his then living issue on the date of the settlor's death for as long as any of the beneficiaries is living; and upon the death of all beneficiaries of the Pot Trust who were alive on the date of the settlor's death, the trustee shall distribute the residue of the Pot Trust to the then living issue of Gary Harvey on the basis of representation. (Petition, Exhibit A – Restatement of Trust, Article Five, paragraph D.)

The attorney who prepared the subject restatement of the Betty J. Harvey 1992 Trust instrument for the settlor declares: beginning in 1992 and continuing until his retirement in 2015 he represented settlor Betty J. Taylor in connection with her estate planning; over the years she made numerous changes to her Trust; he met with her concerning each of these changes, discussed her wishes, and drafted the Trusts and amendments she made over the years; including the amendment and restatement of the Betty J. Taylor Trust that is the subject of the petition; the Gary Harvey Family Pot Trust was originally included in the 2003 amendment of the Trust and remained unchanged through later amendments; having reviewed the Trust provision concerning the Pot Trust and his notes that he took at the time he met with the settlor to discuss the creation of the Pot Trust, it was clear that she wanted half of her assets to benefit her son Gary Harvey and his side of the family and he interpreted her intent broadly to include his issue that was living at the time of the settlor's death, with limitations that Shea Harvey and his issue be excluded and granddaughter Tara (Bonillas) Falconer's distributions were to be paid directly to her special needs trust; and based upon his review of the Trust provisions, notes and recollection of his discussions with the settlor, he believes that

it was the settlor's intent that all of Gary Harvey's issue living at the time of the settlor's death were included as current beneficiaries of the Pot Trust subject to the previously stated limitations; and he believes a more narrow interpretation of who is a current beneficiary of the Pot Trust would be contrary to the settlor's intent. (Petition, Exhibit B – Declaration of David Zelinsky in Support of Petition, paragraphs 2-4.)

The verified petition states that Gary Harvey and Bernice Harvey have a daughter, Michelle Hayes and a son Shea Harvey; Michelle Hayes has two children – Casey Bonillas and Tara Falconer; and Tara Falconer has a child named Dillan Siebert and all of these members of the Gary Harvey family were alive at the time the settlor passed away. (Petition, paragraphs 7 and 9.)

Should the issues concerning service previously stated in this ruling be resolved and there are no oppositions or objections to the petition raised, the court is inclined to determine that Gary Harvey, Bernice Harvey, Michelle Hayes, Casey Bonillas, Tara Falconer, and Dillan Siebert are the current beneficiaries of the Gary Harvey Family Pot Trust.

Payments to the IRS

The petition states: the IRS has filed notices of levy against the interests of Gary Harvey and Bernice Harvey in the Pot Trust for taxes the IRS claims are due and which Gary and Bernice Harvey dispute; the trustee and her counsel have engaged in discussions with the IRS and with beneficiaries Gary and Bernice Harvey regarding the notices of lien; since Gary and Bernice Harvey are not the only beneficiaries entitled to principal and income distributions from the Pot Trust, distributions can not be made to satisfy the Tax liens without impacting the interests of the other current beneficiaries of the Pot Trust; the IRS has taken the position that although distributions to or on behalf of Gary Harvey or Bernice Harvey can not be forced, no distributions can be made to either Gary Harvey or Bernice Harvey from the Pot Trust until the

tax levies are satisfied; no distributions to Gary Harvey or Bernice Harvey have been made since receipt of the notices of levy; Gary Harvey has informed the trustee that since he disputes that the taxes are owed, he would rather not receive any further distributions than have any portion of the Pot Trust go to the IRS to satisfy the taxes purportedly owed; the trustee, trustee's counsel and the IRS have reached an agreement with the IRS that allows distributions to Bernice Harvey to be made, provided that the IRS be paid a matching distribution to be applied to her tax debt until paid in full; and on or about March 23, 2021 trustee's counsel received a partial release of the levy against Bernice Harvey's interest in the Pot Trust that reflected this agreement. (Petition, paragraphs 14-20.)

Should the issues concerning service previously stated in this ruling be resolved and there are no oppositions or objections to the petition raised, the court is inclined to instruct that the trustee is authorized to resume payments to Bernice Harvey as a beneficiary under the terms of the Trust and to make payments to the IRS equal to any payment made to or on behalf of Bernice Harvey pursuant to the partial release of levy against Bernice Harvey's interest.

TENTATIVE RULING # 22: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, DECEMBER 15, 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.eldoradocourt.org/online services/vcourt.html.