

TENTATIVE RULINGS

FOR: June 7, 2019

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

In the Matter of the Jane J. Campbell Surviving Grantor’s Trust **19PR000051**

PETITION TO: (1) INVALIDATE TRUST INSTRUMENTS BASED UPON UNDUE INFLUENCE, LACK OF CAPACITY, FRAUD AND MISTAKE; (2) REFORMATION; AND (3) TO RESTRAIN TRUSTEE FROM USING TRUST ASSETS TO DEFEND

TENTATIVE RULING: Petitioner Scott K. Andersen’s request to restrain trustee Todd H. Andersen from using trust assets to defend against the petition is DENIED WITHOUT PREJUDICE. Petitioner seeks to invalidate the second and third trust amendments based on undue influence, lack of capacity, fraud, and mistake. (Pet., ¶ 30.) The 2014 trust restatement expressly allows the trustee to use trust funds to protect the trust from a contest. (*Id.*, Ex. A, §§ 4.3.j [“Deal with Claims. . . . In order to protect the trust assets and to protect the Trustee in the performance of the Trustee’s duties, the Trustee may litigate, mediate, arbitrate, compromise, settle, release or appeal any claims held by or asserted against the trust (or which affect trust assets) and all expenses incurred in connection with such proceedings shall be charged against the trust or trusts that are involved except to the extent a court . . . determines such expenses are incurred as a result of the Trustee’s liability for (1) breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interest of the beneficiary; or (2) any profit that the Trustee derives from a breach of trust.”]; 7.4 [“No Contest Clause. . . . The Trustee is authorized to defend any contest of this document or any of its provisions at the expense of the trusts created under this document.”].) The second and third amendments do not alter these sections.

Due to the provisions directing the trustee to defend against a challenge to the validity of the second and third amendments, *Whittlesey v. Aiello* (2002) 104 Cal.App.4th 1221 and *Terry v. Conlan* (2005) 131 Cal.App.4th 1445 are distinguishable. As explained in *Doolittle v. Exchange*

Bank (2015) 241 Cal.App.4th 529, 538: “The trust agreements in *Whittlesey* and *Terry* did not contain an explicit directive to the trustee to defend claims challenging the validity of the amendment at the trust’s expense, as does the trust instrument in the present case.” The inclusion of sections 4.3.j and 7.4 in the trust restatement “avoid[s] application” of *Whittlesey* and *Terry*.

Nor is *People ex rel. Harris v. Shine* (2017) 16 Cal.App.5th 524 applicable. *Harris* explained that “where the trust instrument is silent on interim fees, the *grant* of interim fees should be governed by the following: The court must first assess the probability that the trustee will ultimately be entitled to reimbursement of attorney fees and then balance the relative harms to all interests involved in the litigation, including the interests of the trust beneficiaries. An assessment of the balance of harms requires at least some inquiry into the ability of the trustee or former trustee to repay fees if ultimately determined not to be entitled to the costs of defense.” (16 Cal.App.5th at p. 539.) This standard does not apply here because the trust’s “Deal With Claims” and “No Contest Clause” sections are not silent as to interim fees. These sections are drafted broadly. The sections specifically state they apply to “all expenses” as to “any claims” that may “affect trust assets,” which would include, *inter alia*, interim fees.

Consequently, “[a]s a power conferred by the instrument, the power to defend against contests remains in effect until the trust, or as in this case the trust amendment, is judicially invalidated or otherwise terminated.” (*Doolittle, supra*, 241 Cal.App.4th at p. 544; see *id.* at pp. 545-46 “[T]he trust should ordinarily be administered according to its terms unless and until the party challenging its validity sustains its heavy burden of proof.”.) Petitioner otherwise has not sought a preliminary injunction to “allow the court to weigh the equities and enjoin the use of trust assets to defend a challenge upon a proper showing of the likelihood of success.” (*Id.* at p. 546.)

Beyond the confines of the language of the trust instrument, in reaching its decision the Court also has considered “[t]he underlying principle which guides the court in allowing costs and attorneys’ fees incidental to litigation out of a trust estate is that such litigation is a benefit and service to the trust,” and not for the trustee’s personal benefit. (*Whittlesey, supra*, 104 Cal.App.4th at p. 1230.) “Courts have found a trustee’s legal services were for the benefit of the trust, and thus payable from trust funds, where” a trustee successfully defended against a petition to invalidate the trust, and by extension, trust amendments. (See *Harris, supra*, 16 Cal.App.5th at p. 534, citing *Estate of Miller* (1968) 259 Cal.App.2d 536, 545.) Although petitioner argues the trustee’s own purported misconduct has given rise to the petition, allowing trust assets to defend against the petition is a benefit and service to the trust because it is the trustee’s duty to enforce decedent’s purported wishes regarding her estate via her amendments.

Even though the request is denied without prejudice, if petitioner ultimately is successful in invalidating the second and third trust amendments based on undue influence, lack of capacity, fraud, and mistake by showing the trustee acted with “reckless indifference to the interest of the beneficiary,” the Court would entertain a renewed request as to whether the continued use of trust assets to defend is appropriate and whether a surcharge is necessary.

The Court need not reach petitioner's eighteen evidentiary objections to the Todd Anderson declaration or the trustee's six evidentiary objections to the Scott Anderson declaration as they are not pertinent to resolution of the matter.

Appearance is required to set the matter for hearing as to petitioner's two remaining claims in his petition.

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In the Matter of the Keith D. Hangman Revocable Trust

19PR000064

FIRST ACCOUNT AND REPORT OF TRUSTEE AND PETITION FOR SETTLEMENT OF ACCOUNT

TENTATIVE RULING: GRANT petition.

**CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B
(Historic Courthouse) at 8:30 a.m.**

Joana David v. Queen of the Valley Medical Center

26-67321

MOTION TO STRIKE OR TAX COSTS

TENTATIVE RULING: The matter is CONTINUED to June 21, 2019, 8:30 a.m. in Dept. A.