



ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

Status Hearing for Failure to File a Annual or Biennial Account.

| | | |
|---|--|--|
| | MARIA C. MAIRENA , Mother, is Conservator of the Person and Estate with bond of \$56,000.00. | <p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Minute Order 6/17/15: Counsel requests 30 days.</p> <p>1. Need fourth account or written status report pursuant to Local Rule 7.5.</p> |
| | The Conservator's Third Account was settled on 8/23/12. | |
| | On 10/17/14, the Court set this status hearing for failure to file a fourth account. | |
| | Notice of Status Hearing was filed to Attorney Motsenbocker and Maria Mairena on 10/17/14. | |
| Cont from 011415, 051315, 061715 | | |
| Aff.Sub.Wit. | | |
| Verified | | |
| Inventory | | |
| PTC | | |
| Not.Cred. | | |
| Notice of Hrg | | |
| Aff.Mail | | |
| Aff.Pub. | | |
| Sp.Ntc. | | |
| Pers.Serv. | | |
| Conf. Screen | | |
| Letters | | |
| Duties/Supp | | |
| Objections | | |
| Video Receipt | | |
| CI Report | | |
| 9202 | | |
| Order | | |
| Aff. Posting | | |
| Status Rpt | | |
| UCCJEA | | |
| Citation | | |
| FTB Notice | | |
| | Status Report filed 5/6/15 by Attorney Dean Hiyama states Attorney Motsenbocker passed away on 2/19/15. Attorney Hiyama is in the process of purchasing Mr. Motsenbocker's business and is in the process of obtaining a Substitution of Attorney from Maria Mariena, as well as documents necessary to prepare and file the fourth account current, which will cover the period from 9/18/11 through 4/17/15. Attorney Hiyama estimates filing within the next 15 days and therefore requests continuance for approx. 30 days. | |
| | Status Report field 6/15/15 states due to the numerous amount of expenditures each month made on behalf of the Conservatee, the previously estimated time to complete the fourth account was not realistic. The anticipated fourth account current will be covering the period beginning 9/18/11 through 4/17/15. Attorney Hiyama requests an additional amount of time not to exceed 30 days. | |
| | | Reviewed by: skc |
| | | Reviewed on: 7/17/15 |
| | | Updates: |
| | | Recommendation: |
| | | File 1 – Mairena |

3 William Cooley, Sr. (CONS/PE)

Case No. 08CEPR00059

Atty Farmer, C. Michael (for Ruby Jones deceased conservator)

Atty LeVan, Nancy J. (for I'Sha Cooley, conservator of the person)

Atty Kruthers, Heather H (for Public Guardian, conservator of the estate)

Probate Status Hearing for the Filing of the Final Account of Deceased Conservator (Prob.C §2632)

| | | | |
|--------------------------|----------------------|--|---------------------------------|
| | | RUBY JONES , sister, was conservator of the person and estate from 3/25/08 until her death on 6/5/14. | NEEDS/PROBLEMS/COMMENTS: |
| | | I'SHA JONES , daughter, was appointed successor conservator of the person and the PUBLIC GUARDIAN successor conservator of the estate on 9/25/14. | |
| Cont. from 011415 | | 2 nd account of RUBY JONES as conservator for the account period ending 10/31/12 was approved on 4/11/13. Cash assets at the end of the accounting was \$144,267.59. | |
| | Aff.Sub.Wit. | | |
| | Verified | | |
| | Inventory | | |
| | PTC | | |
| | Not.Cred. | | |
| | Notice of Hrg | This status hearing was set for the filing of the final accounting of the Deceased Conservator Ruby Jones. | |
| | Aff.Mail | | |
| | Aff.Pub. | | |
| | Sp.Ntc. | | |
| | Pers.Serv. | Notice of Status Hearing was sent to Attorney Michael Farmer on 10/17/14. | |
| | Conf. Screen | Minute Order dated 1/14/15 states Mr. Farmer represents that he has no original records that have occurred since the last accounting. The Court excuses him from filing another accounting in this matter since he has no documentation to prepare one. Ms. Kruthers will prepare the next account for 11/1/12 through the date of their appointment. | |
| | Letters | | |
| | Duties/Supp | | |
| | Objections | | |
| | Video Receipt | | |
| | CI Report | | |
| | 9202 | | |
| | Order | Status Report filed on 7/14/15 states the person at the Public Guardian's office who prepares the schedules and other documents necessary for the preparation of conservatee accounts is currently carrying a double workload. As a result, the preparation of account documents has been delayed. Therefore, it is respectfully requested that this matter be set out for another 60 days to allow the Public Guardian to prepare the documents in this matter. | |
| | Aff. Posting | | |
| | Status Rpt | | |
| | UCCJEA | | |
| | Citation | | |
| | FTB Notice | | |
| | | | Reviewed by: KT |
| | | | Reviewed on: 7/17/15 |
| | | | Updates: |
| | | | Recommendation: |
| | | | File 3 – Cooley |

Waiver of Account and First Report of Administratrix, Petition for Settlement, for Allowance of Attorneys' Fees and Costs, for Waiver of Commission, and for Final Distribution.

| | | | | |
|---|---|--|--|-----------------------------|
| DOD: 10/1/08 | JO ANN SORIA , Administrator with Will Annexed, is petitioner. | | NEEDS/PROBLEMS/COMMENTS: 1. Need Notice of Hearing. 2. Need proof of service of the Notice of Hearing on: a. Jack Lucchesi b. Linda Hofer c. Jo Ann Soria as Administrator of the Estate of Gloria Lucchesi. 3. Need proof of service of the Notice of Hearing along with a copy of the petition on: a. Edward L. Fanucchi – pursuant to his Request for Special Notice. | |
| | Accounting is waived. | | | |
| Cont. from | I & A | - \$400,000.00 | | |
| <input type="checkbox"/> Aff.Sub.Wit. | POH | - \$214,817.20 | | |
| <input checked="" type="checkbox"/> Verified | Administrator | - waives | | |
| <input checked="" type="checkbox"/> Inventory | Attorney | - \$800.00 (less than statutory) | | |
| <input checked="" type="checkbox"/> PTC | Costs | - \$496.50 (filing fee, certified copies, recorder fees) | | |
| <input checked="" type="checkbox"/> Not.Cred. | Closing | - \$2,000.00 | | |
| <input type="checkbox"/> Notice of Hrg | Distribution, pursuant to Decedent's Will, is to: | | | |
| <input type="checkbox"/> Aff.Mail | Jack Lucchesi | - \$52,880.17 | | |
| <input type="checkbox"/> Aff.Pub. | Jo Ann Soria | - \$52,880.17 | | |
| <input type="checkbox"/> Sp.Ntc. | Linda Hofer | - \$52,880.17 | | |
| <input type="checkbox"/> Pers.Serv. | Jo Ann Soria, as Administrator of the Estate of Gloria Lucchesi | - \$52,880.17 | | |
| <input type="checkbox"/> Conf. Screen | | | | |
| <input checked="" type="checkbox"/> Letters | 11/10/10 | | | |
| <input type="checkbox"/> Duties/Supp | | | | |
| <input type="checkbox"/> Objections | | | | |
| <input type="checkbox"/> Video Receipt | | | | |
| <input type="checkbox"/> CI Report | | | | |
| <input checked="" type="checkbox"/> 9202 | | | | |
| <input checked="" type="checkbox"/> Order | | | | |
| <input type="checkbox"/> Aff. Posting | | | | |
| <input type="checkbox"/> Status Rpt | | | | |
| <input type="checkbox"/> UCCJEA | | | | |
| <input type="checkbox"/> Citation | | | | |
| <input checked="" type="checkbox"/> FTB Notice | | | | |
| | | | | Reviewed by: KT |
| | | | | Reviewed on: 7/17/15 |
| | | | Updates: | |
| | | | Recommendation: | |
| | | | File 5 - Lucchesi | |

Attorney: Linda K. Durost (for Petitioner/Administrator Toni Richardson)

Amended First and Final Report and Account of Administrator; for Allowance of Statutory Attorneys' Fees and Costs; Allowance of Statutory Administrator's Fees and for Final Distribution

| | | | | | | | | | | | | | | | | | | |
|-------------------------------------|----------------------|---|---|-------|---|--------------|----------|---|-----------|---------------|---|-----------|-------------------------------------|--|--------------------|----------------|---|--------------|
| DOD: 6/2/11 | | TONI RICHARDSON , Administrator, is petitioner. | <p>NEEDS/PROBLEMS/COMMENTS:</p> <ol style="list-style-type: none"> 1. This estate was opened using a fee waiver. Filing fees are considered costs of administration. Therefore, the filing fee of \$435.00 is now due for the filing of the initial petition for probate. 2. Need Notice of Hearing for the Amended Petition. 3. Need proof of service of the Notice of Hearing on beneficiary, Bill Richardson. 4. Inventories and appraisals filed total \$183,050.00 and not \$177,550.00 as stated in the accounting. (Reappraisal for sale is just for the sale of the real property. The inventory and appraisal with the date of death value is the correct inventory to use for account purposes.) 5. Statutory fees are calculated incorrectly. Attorney incorrectly included the mortgage payoff as a loss on sale. The correct statutory fees should be \$6,354.79. Calculated on the fee base as follows: <table style="margin-left: 20px;"> <tr> <td>I & A</td> <td>-</td> <td>\$183,050.00</td> </tr> <tr> <td>Receipts</td> <td>-</td> <td>\$ 543.03</td> </tr> <tr> <td>Gains on sale</td> <td>-</td> <td>\$ 400.00</td> </tr> <tr> <td>Less loss on sale of real property-</td> <td></td> <td><u>\$ 5,500.00</u></td> </tr> <tr> <td>Total fee base</td> <td>-</td> <td>\$178,493.03</td> </tr> </table> | I & A | - | \$183,050.00 | Receipts | - | \$ 543.03 | Gains on sale | - | \$ 400.00 | Less loss on sale of real property- | | <u>\$ 5,500.00</u> | Total fee base | - | \$178,493.03 |
| I & A | - | \$183,050.00 | | | | | | | | | | | | | | | | |
| Receipts | - | \$ 543.03 | | | | | | | | | | | | | | | | |
| Gains on sale | - | \$ 400.00 | | | | | | | | | | | | | | | | |
| Less loss on sale of real property- | | <u>\$ 5,500.00</u> | | | | | | | | | | | | | | | | |
| Total fee base | - | \$178,493.03 | | | | | | | | | | | | | | | | |
| | | Account period 2/22/12 – 2/2015 | | | | | | | | | | | | | | | | |
| Cont. from | | Accounting - \$178,548.26 | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Aff.Sub.Wit. | Beginning POH - \$177,550.00 | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> | Verified | Ending POH - \$106,186.69 | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> | Inventory | Attorney - \$4,562.00 | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> | PTC | Administrator - \$4,562.00 | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> | Not.Cred. | Attorney costs (filing fee) - \$435.00 | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Notice of Hrg | Reimbursement of costs to Administrator - \$20,488.00 | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Aff.Mail | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Aff.Pub. | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Sp.Ntc. | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Pers.Serv. | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Conf. Screen | | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> | Letters | 2/22/12 Toni Richardson - \$36,794.14 | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Duties/Supp | Bill Richardson - \$36,794.14 | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Objections | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Video Receipt | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | CI Report | | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> | 9202 | | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> | Order | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Aff. Posting | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Status Rpt | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | UCCJEA | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Citation | | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> | FTB Notice | | | | | | | | | | | | | | | | | |
| | | Distribution, pursuant to intestate succession, is to: | | | | | | | | | | | | | | | | |

6. Need Allowance or Rejection of Creditor's Claim for the Creditor's Claim of DMC filed on 4/27/12. California Rules of Court, Rule 7.401 states that for each creditor's claim filed the Administrator must (1) Allow or reject the claim (2) serve a copy of the claim on the creditor (3) file a copy with proof of service with the court.
7. Escrow closing statement shows that the Administrator received \$110,594.07 from the sale of the real property. The proceeds were ordered into a blocked account. Receipt for Blocked account shows a deposit of \$105,594.07. A difference of \$5,000. Petitioner states when the sale proceeds were deposited, prior to it being blocked, the bank automatically withdrew \$2,300 to pay the balance of the Decedent's credit card. Petitioner states she paid Sam LaPlaca \$1,000 for roofing work he had done on the residence and another \$1,700.00 for other repairs. Examiner note: The declaration of Petitioner for reimbursement of costs also include a \$1,000 payment to Sam LaPlaca Construction for roofing repairs. Is the \$1000 that petition is asking to be reimbursed in addition to the \$1,000 paid from the proceeds of the real property sale? Court may require receipts for the repairs done from Sam LaPlaca Construction.
8. Warren Felger was the former attorney in this case. Therefore he is entitled to a portion of the statutory attorney fees. Need agreement from the attorneys as to apportionment of the attorney fees. – Attorney Durost states that attempts to discuss the fees with Mr. Felger have gone unanswered. Mr. Felger made numerous errors and failed to communicate with petitioner and advise petitioner properly with respect to the account management. Attorney Durost requests that no part of the statutory fees be attributable to Mr. Felger.
9. Creditor's claim of Toni Richardson includes an entry on 3/10/13 for \$500 to Warren Felger for filing fees. Petitioner states she paid Mr. Felger \$500 for filing fees that apparently he never paid.
10. Petitioner states she distributed \$5,000 and jewelry valued at \$250.00 to her brother Bill Richardson. Need receipts for preliminary distribution.
11. Need order.

13A Davis 1989 Family Trust (Trust)

Case No. 14CEPR00298

Atty **Burnside, Leigh W. (for Petitioner Joshua Davis – Beneficiary)**

Petition for Order Compelling Trustee to Account and Report

| | | | | | |
|--|--|---|---|--|---|
| <p>Thomas J. Davis DOD: 6-5-00</p> | <p>JOSHUA DAVIS, Beneficiary, is Petitioner.</p> | <p>NEEDS/PROBLEMS/COMMENTS:</p> | | | |
| <p>Wealthea Davis DOD: 3-25-98</p> | <p>Petitioner states he is a beneficiary of the Davis 1989 Family Trust dated 11-17-89 (the Trust) (Exhibit A). On or about the same date, Thomas and Wealthea Davis also created the Davis Family 1989 Life Insurance Trust (the Insurance Trust) (Exhibit B). The Family Trust became irrevocable on the settlors' deaths. The Insurance Trust was already irrevocable during their lifetimes. Petitioner states BRUCE NEILSEN is the successor trustee of both trusts.</p> | <p>Note: Account and Report filed on 3/26/15 is set for hearing on 5/26/15; however the accounting is not provided in the format required by Probate Code §1060. See Page B.</p> | | | |
| <p>Cont from 051914, 061814, 071614, 082714, 101414, 121514, 022314, 033015, 052615</p> | <p>Petitioner states that following the death of Thomas Davis on 6-5-00, Petitioner, by his agent and CPA Tom Bell, inquired of Trustee Neilsen on multiple occasions about the nature of the Trust assets and timetable for distribution. Petitioner was aware that the decedents had owned real property in California, various stocks and bonds, as well as other assets to which Petitioner and the other named in this petition were beneficiaries.</p> | <p>Note: On 8-26-14, Joshua Davis, Corey Davis and Brittney Davis filed a separate Petition for Order Compelling Trustee to Account and Report in Case 14CEPR00790, titled "Davis Family 1989 Life Insurance Trust – See Page 10 of this calendar.</p> | | | |
| <table border="1"> <tr> <td data-bbox="99 464 162 506"></td> <td data-bbox="162 464 358 506">Aff.Sub.Wit.</td> <td data-bbox="358 464 415 506"></td> </tr> </table> | | Aff.Sub.Wit. | | <p>Petitioner has requested that Trustee Neilsen provide him with an account of his administration of the Trust, but Trustee Neilsen has not done so. Additionally, Petitioner believes portions of the trust property that were to be held fbo Trust beneficiaries and Insurance Trust beneficiaries have been used to make loans to beneficiaries other than Petitioner, all to the detriment of Petitioner and other beneficiaries who may have lost their share of Trust and Insurance Trust assets as a result of the breach of his duties to the beneficiaries by Trustee Neilsen.</p> | <p>Minute Order 2-23-14: Mr. Neilson represents that the 2014 accounting is not yet back from the accountant. The Court admonishes that this will be the last continuance in this matter. If the accounting in this matter and in the related matter of 14CEPR00790 are filed at least two court days prior, then no appearance is necessary on 3/30/15. However, if the accountings are not filed, then a Status Report verified by the client is required as to each matter. Cont to 033015 900 303.</p> |
| | Aff.Sub.Wit. | | | | |
| <table border="1"> <tr> <td data-bbox="99 506 162 548">✓</td> <td data-bbox="162 506 358 548">Verified</td> <td data-bbox="358 506 415 548"></td> </tr> </table> | ✓ | Verified | | <p>SEE ADDITIONAL PAGES</p> | <p>SEE ADDITIONAL PAGES</p> |
| ✓ | Verified | | | | |
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| | | <p>Reviewed by: skc</p> | | | |
| | | <p>Reviewed on: 7/17/15</p> | | | |
| | | <p>Updates:</p> | | | |
| | | <p>Recommendation:</p> | | | |
| | | <p>File 13A - Davis</p> | | | |

Page 2

Petitioner states moreover, Trustee Neilsen has failed to require the execution of notes requirement repayments by the borrowers of the Trust and Insurance Trust assets, and/or that Trustee Neilsen has failed to require the repayment of principal and interest on the Trust and Insurance Trust monies by the borrowers, all to the detriment of Petitioner and the other beneficiaries.

Petitioner states the Trust estate was to be divided into 12 separate trusts immediately on the death of both settlors. Petitioner made inquiries of Trustee Neilsen as to what is held in the trust created for Petitioner, but Trustee Neilsen has not provided the requested information or any meaningful response. Petitioner is informed and believes that Trustee Neilsen has, without consent or knowledge of several of the beneficiaries, used Trust and/or Insurance Trust assets to fund business transactions initiated by other beneficiaries, all to the detriment of Petitioner and other beneficiaries.

Petitioner has been unable to determine what has been done with what portion of the Insurance Trust assets and the Trust assets which were to have been segregated from the rest of the Trust property and Insurance Trust property for Petitioner's benefit.

Petitioner requests the Court order as follows:

1. Directing Trustee Bruce Neilsen to prepare and file a complete account and report of his administration of the Davis 1989 Family Trust and the Davis 1989 Life Insurance Trust for the period of June 6, 2000 through March 31, 2014, inclusive;
2. Directing Trustee Bruce Neilsen to set the Account and Report for hearing and give notice of same pursuant to §17203;
3. Awarding Petitioner reasonable attorneys' fees and costs incurred in this matter; and
4. Granting any and all other relief as the Court deems just and proper.

SEE ADDITIONAL PAGES

NEEDS/PROBLEMS/COMMENTS:

~~1. This petition requests accountings for two separate trusts. The two separate trusts have separate terms, separate assets, and separate purposes, and as such consideration by the Court requires separate petitions, separate notice, separate files, separate filing fees, and ultimately separate accountings.~~

~~The Court may designate this case number as the Family Trust file and direct Petitioner to initiate a separate proceeding regarding the Life Insurance Trust.~~

Update: On 8-26-14, Joshua Davis, Corey Davis and Brittney Davis filed a separate Petition for Order Compelling Trustee to Account and Report in Case 14CEPR00790, titled "Davis Family 1989 Life Insurance Trust – See Page 7 of this calendar.

2. Also, per its terms, the Family Trust was to immediately divide into twelve (12) separate trusts, only one of which was for Petitioner's benefit. Need clarification and authority regarding the scope of the request for accounting(s).

Note: The language in the instruments differentiates between division into separate trusts and into separate shares, as contemplated by the Life Insurance Trust.

3. Notice appears to have been mailed to six people as couples, rather than as individuals entitled to direct notice. The Court may require amended direct service pursuant to Cal. Rules of Court 7.51.

4. Probate Code §17200(b)(7) provides that the Court can compel the trustee to provide information or account if the trustee has failed to provide the requested information within 60 days after the beneficiary's reasonable written request. Here, Petitioner states that he requested information after the settlors' deaths, which was approx. 14 years ago, but Petitioner does not state if any recent written request was made pursuant to §17200(b)(7), or what response was received, if any, pursuant to the written request. The Court may require clarification as to whether this petition may be prematurely filed pursuant to §17200(b)(7) and may require continuance for formal request and response. (Note: The requests should be separated for each trust pursuant to the above items.)

5. Need revised order.

Atty Neilson, Bruce A. (Attorney Trustee – Petitioner)

Account and Report of Trustee and Petition for its Settlement

| | | | |
|-------------------------------------|---------------|--|--|
| | | <p>BRUCE NEILSON, Trustee of the DAVIS 1989 FAMILY TRUST, dated 11/17/89, submits the account and report of administration as set forth in Exhibit A.</p> | <p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Minute Order 5/26/15: Mr. Neilson is admonished that the accounting needs to be in the proper format. Additionally, he is to report back to the Court regarding the status of the tax extension at the 7/22/15 hearing.</p> <p>1. This Account is not in the form required by Probate Code §1060 and therefore cannot be reviewed by Examiner.</p> |
| | | | |
| Cont. from 052615 | | Account period: 1/1/04 – 12/31/13 | |
| <input type="checkbox"/> | Aff.Sub.Wit. | <p>The Trustee declares that he has read the account and report as prepared by Moore, Grider CPAs and knows the contents thereof.</p> <p>Objection to Account was filed 5/21/15 by Joshua Davis, Corey Davis, and Britney Davis. See Objection for details.</p> | |
| <input checked="" type="checkbox"/> | Verified | | |
| <input type="checkbox"/> | Inventory | | |
| <input type="checkbox"/> | PTC | | |
| <input type="checkbox"/> | Not.Cred. | | |
| <input type="checkbox"/> | Notice of Hrg | | |
| <input type="checkbox"/> | Aff.Mail | | |
| <input type="checkbox"/> | Aff.Pub. | | |
| <input type="checkbox"/> | Sp.Ntc. | | |
| <input type="checkbox"/> | Pers.Serv. | | |
| <input type="checkbox"/> | Conf. Screen | | |
| <input type="checkbox"/> | Letters | | |
| <input type="checkbox"/> | Duties/Supp | | |
| <input checked="" type="checkbox"/> | Objections | | |
| <input type="checkbox"/> | Video Receipt | | |
| <input type="checkbox"/> | CI Report | | |
| <input type="checkbox"/> | 9202 | | |
| <input type="checkbox"/> | Order | | |
| <input type="checkbox"/> | Aff. Posting | | |
| <input type="checkbox"/> | Status Rpt | | |
| <input type="checkbox"/> | UCCJEA | | |
| <input type="checkbox"/> | Citation | | |
| <input type="checkbox"/> | FTB Notice | | |
| | | | Reviewed by: skc |
| | | | Reviewed on: 7/17/15 |
| | | | Updates: |
| | | | Recommendation: |
| | | | File 13B - Davis |

Petition for Order Compelling Trustee to Account and Report

| | | | | |
|---|---------------|---|---|----|
| | | <p>JOSHUA DAVIS, COREY DAVIS and BRITTNEY DAVIS, beneficiaries, are petitioners.</p> <p>Petitioners state Settlor Wealthea Davis died on 3/25/98 and Thomas J. Davis died on 6/5/00 – more than 14 years ago.</p> <p>BRUCE NEILSON ("Trustee Neilson") is successor Trustee.</p> <p>Petitioners state following the death of settlor Thomas J. Davis, by their agent and their CPA, Tom Bell, inquired on multiple occasions of Trustee Neilson about the nature of the Trust assets and the timetable for distribution. Petitioners believe that the Insurance Trust at its inception was funded with approximately \$2,370,000.</p> <p>Petitioners have requested that Trustee Neilson provide them with an account of his administration of the Insurance Trust, but Trustee Neilson has not yet done so.</p> <p>Additionally, Petitioners believe that portions of the Insurance Trust property that was to be held by Trustee Neilson for the benefit of the Insurance Trust beneficiaries has been used to make loans or excessive distributions to beneficiaries other than Petitioners, all to the detriment of Petitioners and other beneficiaries whose share of Insurance Trust assets have been improperly loaned or otherwise transferred to beneficiaries who were not entitled to receive what was loaned or otherwise transferred to them as a result of the breach by Trustee Neilson of his duties to the beneficiaries.</p> | <p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Please see related case on page 13.</p> <p>1. Need Order</p> | |
| Cont. from 121514, 022315, 033015, 033015, 052615 | | | | |
| <input type="checkbox"/> | Aff.Sub.Wit. | | | |
| <input checked="" type="checkbox"/> | Verified | | | |
| <input type="checkbox"/> | Inventory | | | |
| <input type="checkbox"/> | PTC | | | |
| <input type="checkbox"/> | Not.Cred. | | | |
| <input checked="" type="checkbox"/> | Notice of Hrg | | | |
| <input checked="" type="checkbox"/> | Aff.Mail | | | W/ |
| <input type="checkbox"/> | Aff.Pub. | | | |
| <input type="checkbox"/> | Sp.Ntc. | | | |
| <input type="checkbox"/> | Pers.Serv. | | | |
| <input type="checkbox"/> | Conf. Screen | | | |
| <input type="checkbox"/> | Letters | | | |
| <input type="checkbox"/> | Duties/Supp | | | |
| <input type="checkbox"/> | Objections | | | |
| <input type="checkbox"/> | Video Receipt | | | |
| <input type="checkbox"/> | CI Report | | | |
| <input type="checkbox"/> | 9202 | | | |
| <input type="checkbox"/> | Order | X | | |
| <input type="checkbox"/> | Aff. Posting | | | |
| <input type="checkbox"/> | Status Rpt | | | |
| <input type="checkbox"/> | UCCJEA | | | |
| <input type="checkbox"/> | Citation | | | |
| <input type="checkbox"/> | FTB Notice | | | |
| | | <p>Please see additional page.</p> | <p>Reviewed by: KT</p> <p>Reviewed on: 7/17/15</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 15A – Davis Life</p> | |

Moreover, Petitioners believe that Trustee Neilson has failed to require the execution of notes requiring repayment by the borrowers of the Insurance Trust assets, and/or that Trustee Neilson has failed to require repayment of principal and interest on the Insurance Trust monies by the borrowers, all to the detriment of Petitioners and the other Beneficiaries to whom loans were not made.

Petitioners believe that Trustee Neilson has transferred property belonging to the beneficiaries of the Insurance Trust in a manner that diminishes Petitioners' rights as beneficiaries under the Insurance Trust. Petitioners submit Trustee Neilson has refused to share information with Petitioners concerning what has been done with the assets of the Insurance Trust, and that such refusal constitutes a violation of Probate Code § 16060 which states the trustee has a duty to keep the beneficiaries "reasonably informed of the trust and its administration."

Further, Petitioners believe that Trustee Neilson has made substantially greater distributions to some beneficiaries than to others, in a manner which is inconsistent with the terms of the Insurance Trust. Some beneficiaries have been distributed or loaned far more than their "share" of the trust assets. Petitioners have been distributed far less than their "shares" and the Insurance Trust does not appear to hold sufficient assets to provide Petitioners with the assets to which they are entitled.

Petitioners request this Court order Trustee Neilson to provide a complete account and report of his administration of the Insurance Trust for the period from June 6, 2000 through the present.

Petitioners allege that Trustee Neilson should be personally surcharged for any damages resulting from his mismanagement of the Insurance Trust and failure to provide the beneficiaries with information as provided by law.

Petitioners allege that Trustee Neilson's failure to segregate the Insurance Trust assets as provided for in the Insurance Trust constitutes a breach of his fiduciary duties as Trustee.

As a proximate result of Trustee Neilson's breach of trust, there has been an extreme depletion of the Insurance Trust assets which would be available for distribution to Petitioners if not for the wrongful distributions and loans made by Trustee Neilson. Petitioners believe that Trustee Neilson's breach of trust has resulted in damages to Petitioners and the Insurance Trust in an amount not less than \$533,000.

Wherefore, Petitioners request the Court order the following:

1. Directing Trustee Bruce Neilson to prepare and file a complete account and report of his administration of the Davis Family 1989 Life Insurance Trust for the period of 6/6/2000 through 8/15/2014, inclusive;
2. Directing Trustee Bruce Neilson to set the Account and Report for hearing and give notice of same pursuant to Probate Code § 17203;
3. Awarding Petitioners reasonable attorneys' fees and costs incurred in this matter;
4. Surcharging Trustee Bruce Neilson as appropriate according to proof.

Attorney

Krbechek, Randolph (for Kismet Burroughs – Son – Petitioner)

Attorney

Boyett, Deborah K. (Court appointed for Proposed Conservatee)

Interested Person

Adams, Paulette (Pro Per – Sister)

Petition for Appointment of Probate Conservator of the Person and Estate
(Prob. C. 1820, 1821, 2680-2682)

| | | | |
|-------------------------|---------------|---------------------------|---|
| | | See petition for details. | <p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Court Investigator advised rights on 4/14/15</p> <p>Voting rights affected – need minute order.</p> <p><u>Note:</u> Petitioner resides in Altadena, California.</p> <p><u>Minute Order 6/22/15:</u> The Capacity Declaration is accepted for filing in open court. The Court appoints the Public Guardian as Temporary Conservator of the Person without prejudice forthwith. Parties are encouraged to discuss the deed issue between now and the next hearing.</p> <p><u>Note:</u> Letters of Temporary Conservatorship issued to the Public Guardian on 6/26/15 and expire 7/22/15.</p> <p>As of 7/15/15, nothing further has been filed. The following issues remain:</p> <p style="text-align: center;"><u>SEE ADDITIONAL PAGES</u></p> <p>Reviewed by: skc</p> <p>Reviewed on: 7/17/15</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 20 - Adams</p> |
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| | | | |
| Con from 050415, 062215 | | | |
| | Aff.Sub.Wit. | | |
| ✓ | Verified | | |
| | Inventory | | |
| | PTC | | |
| | Not.Cred. | | |
| ✓ | Notice of Hrg | | |
| ✓ | Aff.Mail | W | |
| | Aff.Pub. | | |
| | Sp.Ntc. | | |
| ✓ | Pers.Serv. | W | |
| ✓ | Conf. Screen | | |
| ✓ | Letters | | |
| ✓ | Duties/Supp | | |
| | Objections | | |
| ✓ | Video Receipt | | |
| ✓ | CI Report | | |
| | 9202 | | |
| | Order | X | |
| | Aff. Posting | | |
| | Status Rpt | | |
| | UCCJEA | | |
| ✓ | Citation | | |
| | FTB Notice | | |

Page 2

As of 7/17/15, the following issues have not been addressed:

NEEDS/PROBLEMS/COMMENTS:

1. Attachment 1f is not sufficient to request dementia powers under probate Code §2356.5. Mandatory Judicial Council Form GC-313, Attachment Requesting Special Orders Regarding Dementia, must be used to request powers under Probate Code §2356.5. Amendment may be required, since this attachment is mandatory, contains mandatory information, and was not included with service.
2. Need proof of personal service of Citation with a copy of the petition, and all appropriate attachments, as noted above, at least 15 days prior to the hearing on proposed Conservatee, Shirley Adams pursuant to Probate Code §1824.

Note: A "Proof of Service" filed 5/26/15 indicates service of a citation and petition, but the Citation has not been filed, and it does not appear that #1 above has been cured or that such attachment was served.

3. Need Capacity Declaration with Dementia Attachment. The Capacity Declaration filed in open court on 6/22/15 does not contain the dementia attachment (Mandatory Judicial Council Form GC-335A) in support of the apparent request for dementia powers (see #1 above).
4. The Court may require clarification as to the necessity for authority to sell the Proposed Conservatee's former residence without Court confirmation, proper publication and noticed hearing, with reference to Probate Code §§ 2540(b) and 2543. The petition does not indicate any urgency.
5. Need order.

| | | | |
|---------------------------|---------------|---|---|
| See petition for details. | | | NEEDS/PROBLEMS/COMMENTS: |
| | | | |
| | | | Minute Order 7/8/15: Petitioner represents that the juvenile matter is set for 9/14/15 in 99C. Matter continued to 7/22/15. |
| | | | |
| Cont. from 060315, 070815 | | | <ol style="list-style-type: none"> As previously noted: This minor is a ward of the Juvenile Delinquency Court. Therefore, this Probate Court does not have jurisdiction to grant a temporary or general guardianship for this minor. Petitioner may wish to pursue placement in the proper Court. <p><u>If this petition goes forward, the following issues exist:</u></p> <ol style="list-style-type: none"> Need Child Information Attachment (GC-210CA). Need Notice of Hearing. Need proof of personal service of Notice of Hearing with a copy of the petition at least 15 days prior to the hearing per Probate Code §1511 on: <ul style="list-style-type: none"> Minor Imani Byrd Mother (Name not provided) Need proof of service of Notice of Hearing with a copy of the petition at least 15 days prior to the hearing per Probate Code §1511 on the grandparents who did not waive notice. Notice to the minor's juvenile probation officer / County of Fresno may also be required. |
| | Aff.Sub.Wit. | | |
| ✓ | Verified | | |
| | Inventory | | |
| | PTC | | |
| | Not.Cred. | | |
| | Notice of Hrg | X | |
| | Aff.Mail | | |
| | Aff.Pub. | | |
| | Sp.Ntc. | | |
| | Pers.Serv. | X | |
| ✓ | Conf. Screen | | |
| | Letters | X | |
| ✓ | Duties/Supp | | |
| | Objections | | |
| | Video Receipt | | |
| ✓ | CI Report | | |
| | Clearances | X | |
| | Order | X | |
| | Aff. Posting | | |
| | Status Rpt | | |
| ✓ | UCCJEA | | |
| | Citation | | |
| | FTB Notice | | |
| | | | Reviewed by: skc |
| | | | Reviewed on: 7/17/15 |
| | | | Updates: |
| | | | Recommendation: |
| | | | File 25 - Byrd |