



## 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.

**Amended First and Final Account and Report of Executor, Petition for Allowance of Compensation to His Attorney, and Reimbursement to Executor for Funeral Expenses and Closing of Estate Due to Exhaustion of Assets**

<b>DOD: 10-29-08</b>	<b>BRIAN FRY</b> , Executor with Full IAEA without bond, is Petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b>
<b>Cont. from: 071714</b>	<b>Account period: 1-27-09 through 11-30-13</b>	<b>Continued from 7-17-14.</b>
	Accounting: \$9,607.98	
	Beginning POH: \$9,607.98	
	Ending POH: \$8,211.77 (cash)	
<input type="checkbox"/> <b>Aff.Sub.Wit.</b>	Executor (Statutory): Waives	<b>As of 8-25-14, nothing further has been filed.</b>
<input checked="" type="checkbox"/> <b>Verified</b>	<b>Executor: \$6,276.77</b> (Partial reimbursement for funeral costs and costs of administration totaling \$8,250.00, per Exhibit "A")	<b>SEE PAGE 2</b>
<input checked="" type="checkbox"/> <b>Inventory</b>	<b>Attorney (Statutory): \$384.32</b>	
<input checked="" type="checkbox"/> <b>PTC</b>	<b>Attorney (Extraordinary): \$1,115.68</b>	
<input checked="" type="checkbox"/> <b>Not.Cred.</b>	Attorney LeVan states that after reviewing the information presented to the attorney for the accounting, she found out that other assets were marshaled and sold without being included on the I&A. Attorney LeVan therefore had to prepare a corrected I&A and amend the accounting.	
<input checked="" type="checkbox"/> <b>Notice of Hrg</b>	<b>Costs: \$435.00</b> (filing fee for this petition)	
<input checked="" type="checkbox"/> <b>Aff.Mail</b> <span style="float: right;">w</span>	<b>Petitioner lists the five Creditor's Claims filed against the estate at Exhibit A.</b>	
<input type="checkbox"/> <b>Aff.Pub.</b>	<b>Petitioner requests that:</b>	
<input type="checkbox"/> <b>Sp.Ntc.</b>	1. Notice of Hearing of this account, report, and petition be given as required by law;	<b>Reviewed by: skc</b>
<input type="checkbox"/> <b>Pers.Serv.</b>	2. The Court make an order approving, allowing, and settling the account and report of the conservator [sic] in all respects as filed;	<b>Reviewed on: 8-25-14</b>
<input type="checkbox"/> <b>Conf. Screen</b>	3. The Court authorize Petitioner to pay his attorney \$1,500.00 as ordinary and extraordinary compensation for her services during the period of this accounting;	<b>Updates:</b>
<input checked="" type="checkbox"/> <b>Letters</b>	4. The Court authorize partial reimbursement for funeral expenses to Petitioner in the amount of \$6,276.77;	<b>Recommendation:</b>
<input type="checkbox"/> <b>Duties/Supp</b>	5. The Court authorize the Petitioner to close this estate due to exhaustion of all assets; and	<b>File 1 - Fry</b>
<input type="checkbox"/> <b>Objections</b>	6. Any other orders that the Court considers proper.	
<input type="checkbox"/> <b>Video Receipt</b>		
<input type="checkbox"/> <b>CI Report</b>		
<input checked="" type="checkbox"/> <b>9202</b>		
<input checked="" type="checkbox"/> <b>Order</b>		
<input type="checkbox"/> <b>Aff. Posting</b>		
<input type="checkbox"/> <b>Status Rpt</b>		
<input type="checkbox"/> <b>UCCJEA</b>		
<input type="checkbox"/> <b>Citation</b>		
<input checked="" type="checkbox"/> <b>FTB Notice</b>		

## Page 2 - NEEDS/PROBLEMS/COMMENTS:

1. The Court may require clarification regarding the assets of the estate:

The original I&A filed 12-24-08 (prior to appointment) reflected one line item, \$4,727.19 cash, as of the Decedent's date of death, which was 10-29-08.

Except for notice of administration to creditors and agencies, and the filing of claims totaling \$16,537.21 by various creditors, there was no further activity in the estate until the Court set a status hearing for failure to file a petition for final distribution, which was due in January 2010 pursuant to Probate Code §12200.

In January 2014, Petitioner filed a verified accounting based on the \$4,727.19, which included a statement that the Property On Hand as of 11-30-13 (five years later) was that exact same amount \$4,727.19, except that the POH Schedule indicated that it was actually \$3,452.98 cash and \$1,274.21 "American Century Investments."

Examiner Notes for that petition noted that if cash, and especially investments, had been kept untouched in interest-bearing accounts for 5 years, pursuant to the Duties and Liabilities of Personal Representative filed 12-24-08, interest would have been earned.

Petitioner has now filed a Corrected I&A, which corrects the date of death estate value to include cash of \$3,452.98 only, and adds a vehicle and misc. personal property.

This amended petition is based on the Corrected I&A, and now, contrary to the information provided in the prior petition, states that the POH as of 11-30-13 was actually \$8,211.77, which appears to represent the \$3,452.98 cash plus \$1,800.00 from the sale of the vehicle plus \$2,958.79 from the sale of the misc. personal property.

However, again, Examiner notes that it does not appear that estate funds have been held in an interest-bearing account pursuant to the Duties and Liabilities of Personal Representative.

Further, the \$1,274.21 "American Century Investments" is now not included. The Court may require clarification regarding why this asset is now not considered an asset of the estate.

## 2. Petitioner does not itemize the costs for which he is requesting reimbursement. The petition refers to Exhibit "A" however, that is the list of Creditor's Claims. Need itemization.

## 3. Attorney requests compensation totaling \$1,500.00, including the full statutory compensation of \$384.22 based on the amended I&amp;A plus \$1,115.68 in extraordinary fees.

First, need clarification as to how correcting the I&A and amending the accounting to more accurately reflect the acts of the executor during administration constitutes extraordinary services. See Cal. Rules of Court 7.702 and 7.703.

Second, need itemization for extraordinary services pursuant to Cal. Rules of Court 7.702 Local Rule 7.18. (The attorney states she performed 16+ hours of work totaling \$3,200, but does not provide itemization.)

Third, pursuant to Probate Code §12205, the Court may reduce compensation due to the delinquency in closing this estate.

## 4. Need order. The Court may strike any language confirming and approving the acts of the personal representative during administration. The order should also include a provision for payment of creditors in the event of discovery of assets.

Note: Unpaid creditors include Hinds Hospice, Bank of America, Fresno Credit Bureau, and West Asset Management for Citibank. All were given notice of this hearing.