

(1) Petition for Final Distribution on Waiver of Accounting and (2) for Allowance of Fees [Prob. C. 11600; 10830]

<b>DOD: 2-24-09</b>	<b>WALTER G. JONES</b> , Executor with Full IAEA without bond, is Petitioner.	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p>1. As sole heir pursuant to Decedent's will, Petitioner waived accounting; however, under Probate Code §10954(c)(2), a creditor whose interest has not been satisfied may petition for account.</p> <p>The Bank of America Creditor's Claim was allowed, but is not paid.</p> <p>Examiner notes that Notice of Hearing was mailed to the creditor on 8-10-12.</p> <p>The Court may require continuance for response or inquiry, if any.</p> <p style="text-align: center;"><b>SEE PAGE 2</b></p> <p><b>Reviewed by:</b> skc</p> <p><b>Reviewed on:</b> 9-6-12</p> <p><b>Updates:</b></p> <p><b>Recommendation:</b></p> <p><b>File 1 - Jones</b></p>
	Accounting is waived.	
	I&A: \$ 240,000.00 (residence) POH: \$ 1,500.00 (cash in attorney trust account)	
	Executor (Statutory): Waived	
<input checked="" type="checkbox"/> <b>Aff.Sub.Wit.</b>	Attorney (Statutory): \$6,550.00	
<input checked="" type="checkbox"/> <b>Verified</b>	Costs: \$435.00 (filing)	
<input checked="" type="checkbox"/> <b>Inventory</b>	<b>Petitioner states that except for the funds held in the attorney trust account, there are no remaining assets of the estate.</b>	
<input checked="" type="checkbox"/> <b>PTC</b>	Petitioner states he obtained a line of credit for about \$65,000.00 against the residence and took a draw against the line of credit for about \$65,000.00, less \$6,650.00 in loan processing and appraisal fees, a loan broker fee of \$6,000.00, a document preparation fee of \$750.00, and prepaid interest in the amount of \$13,750.00, resulting in a net distribution to Petitioner of about \$37,850.00. Except for \$3,062.00 used for residence maintenance expenses, Petitioner advises the Court that he used the remaining portion of the draw for his personal living expense, including a new business venture, against the advice of his counsel.	
<input checked="" type="checkbox"/> <b>Not.Cred.</b>	Petitioner subsequently sold the real property, at which time all amounts owed on the property, including the line of credit, were paid. Petitioner received \$19,887.02 from the sale, and again, contrary to the advice of his counsel, used the proceeds to pay for his own medical expenses. Petitioner states his only income is approx. \$880.00/month from Social Security, and prior to the sale, Petitioner had suffered a serious stroke. Petitioner apologizes to the Court and asks the Court's forgiveness for his lapse in judgment in using estate funds to pay his own expenses.	
<input checked="" type="checkbox"/> <b>Notice of Hrg</b>	Petitioner states that the \$1,500.00 remaining in the attorney trust account will be used toward attorney fees and costs, and that he will assume personal responsibility for payment of the remainder of the attorney fees and the creditor's claim of Bank of America (\$1,965.21) by assigning liens on a future inheritance (attached).	
<input checked="" type="checkbox"/> <b>Aff.Mail</b> <span style="float: right;">W</span>	<b>Petitioner prays for an Order</b> confirming and approving his acts and proceedings, ordering his personal liability to pay the creditor's claim and the balance of the attorney fees in accordance with the "Priority Assignment of Beneficial Interest in Estate of Dorothy Jones Ripperdan" and "Secondary Assignment," and distribution of property now now known or discovered to Petitioner.	
<b>Aff.Pub.</b>		
<b>Sp.Ntc.</b>		
<b>Pers.Serv.</b>		
<b>Conf. Screen</b>		
<input checked="" type="checkbox"/> <b>Letters</b>		
<b>Duties/Supp</b>		
<b>Objections</b>		
<b>Video Receipt</b>		
<b>CI Report</b>		
<input checked="" type="checkbox"/> <b>9202</b>		
<input checked="" type="checkbox"/> <b>Order</b>		
<b>Aff. Posting</b>		
<b>Status Rpt</b>		
<b>UCCJEA</b>		
<b>Citation</b>		
<input checked="" type="checkbox"/> <b>FTB Notice</b>		

**NEEDS/PROBLEMS/COMMENTS:**

2. Petitioner requests that the Court approve his acts and proceedings as Executor including:
- *borrowing against and encumbering the real property of the estate without Court authorization, which is a violation of Probate Code §9800,*
  - *using the funds received for purposes other than the purposes allowed by Probate Code §9800 (also a violation), including the majority for Petitioner's personal use ("a new business venture").*
  - *This constitutes an unauthorized preliminary distribution in violation of Probate Code §11621, which states that the Court may authorize preliminary distribution if it appears that it may be made without loss to creditors or injury to the estate.*
  - *Petitioner then sold the real property and used the remainder of the funds for personal use, which is further unauthorized preliminary distribution in violation of Probate Code §11621.*

Although Petitioner is the sole heir, his duty is first to the estate, including administration and payment of creditors. It appears that Petitioner's actions have resulted in an insolvent estate and an unpaid creditor.

The Court may require that any language approving these acts be stricken from the final order.

3. Petitioner requests to assume personal liability for payment of the creditor's claim and executed "Priority" and "Secondary Assignments of Beneficial Interest in Estate of Dorothy Jones Ripperdan," wherein he assigns his beneficial interest as an heir of his deceased great-aunt for payment of the balance of the attorney fees and Bank of America Creditor's Claim.

Petitioner explains that he was recently advised that he is an heir of this estate, which "may" be enough to pay the Creditor's Claim and the remainder of the statutory attorney fees, but that the principal asset of the estate is held by the California Controller's office and will "probably not be paid to him any time soon."

Examiner notes that Petitioner does not provide any information about this estate or decedent, and it does not appear to be an estate in this Court, and that any assignment would need to be made pursuant that estate's administration, not this one.

Further, Examiner is not aware of authority that would allow this Court to make an order for personal liability on a creditor's claim in reliance of a future possible source of income.

Lastly, these "Assignments" are only assignments of this possible future inheritance, and do not appear to include any personal assumption of liability.

The Court may require agreement of the creditor or alternative plan.

4. Under Probate Code §12205, the Court may reduce the attorney's compensation if the Court makes determinations that the time taken for administration exceeded the time required by this chapter, that the time was within control of the personal representative or attorney whose compensation is being reduced, and that the delay was not in the best interest of the estate. Here, Petitioner states the actions he took during estate administration were advised against by his counsel, which indicates that Attorney Barrus was aware of Petitioner's continuing actions, and regardless, was aware that estate administration was exceeding of the one year time frame provided by Probate Code §12200.

The Court may require clarification regarding the attorney's failure to timely close the estate or provide status report to disclose the cause of such failure, and may reduce the statutory compensation pursuant to Probate Code §12205. Examiner notes that such status report and disclosure pursuant to Probate Code §12201 may have prevented further action and damage to the estate, and may have prompted payment to the creditor, which would have allowed the estate to close and authorized payment to be made to Petitioner.

**Additional Notes to Judge:**

- Petitioner states the draw against the line of credit was \$65,000, but yielded only \$37,850 after fees and prepaid interest.
- Examiner notes that the house sold for \$185,000 and the total reduction amount was \$165,112.98, resulting in \$19,887.02 cash to the estate, which was then used by Petitioner. This reduction amount is over \$100,000.00 more than the amount Petitioner states that he borrowed, but he does not explain whether the property was previously encumbered by the decedent.
- The line items specifically break down the reduction into \$137,618.41 to pay off 1<sup>st</sup> PLM Lender Services Inc. (far more than \$65,000.00, especially considering that over \$13,000 in interest was "prepaid"), and \$22,024.50 in "settlement charges to seller."