

Probate Notes for October 9, 2014

Probate notes are a recommendation as to the outcome of the petition. Unlike tentative rulings, they do not automatically become adopted as the order of the court. Unless an appearance at the hearing is otherwise required by law, if petitioner submits a proposed order prior to the hearing and the recommendation is to grant the petition, no appearance is necessary. If you are scheduled to appear and there is no probate note issued in your case, you should appear as scheduled. If you wish to continue a matter, you must contact the civil division at (530) 406-6704, at least two (2) court days before your hearing.

Please note: The following probate matters will be heard in **Department Two at 9:00 a.m.**

CASE: In the Matter of the McCray Trust
Case No. CV P2 14-106

It is recommended to deny petitioner James C. McCray's request to preclude Carol Reiff as trustee from using funds of the McCray Trust ("Trust") to defend the trust contest. Mr. McCray has not presented sufficient evidence to demonstrate that trustee Ms. Reiff is pursuing her own interests to the detriment of others. (*Terry v. Conlan* (2005) 131 Cal.App.4th 1445, 1464.)

It is recommended to deny Mr. McCray's petition for an order directing Ms. Reiff to return the real property located at 223 Widget Lane in Walnut Creek to the Trust, and to establish a constructive trust. Mr. McCray fails to provide any evidence or legal authority to support these requests.

It is recommended to grant Mr. McCray's petition for an order directing George Carll and Ms. Reiff to provide an account for all actions taken as attorneys-in-fact for Virginia McCray. (Petition, ¶¶ 28-31, 34-37, Prob. Code, § 4236.)

It is recommended to deny Mr. McCray's petition for an order removing Ms. Reiff as the trustee of the Trust. Mr. McCray fails to provide sufficient evidence to support a finding that the continuance of Ms. Reiff as trustee would be detrimental to the Trust. (*Jones v. Stubbs* (1955) 136 Cal.App.2d 490.)

It is recommended to grant trustee Ms. Reiff's motion to release the hold on the trust accounts. (*Terry v. Conlan* (2005) 131 Cal.App.4th 1445, 1464.) The evidence presented does not support a finding that the Trust is funding Ms. Reiff's litigation in her capacity as a beneficiary.

Ms. Reiff's motion to expunge the notice of pendency of action is **DROPPED AS MOOT**. Ms. Reiff concedes that notice of pendency of action has been withdrawn. (Ms. Reiff's Reply filed September 30, 2014, p. 2:4-5.)

As there is a dispute regarding the validity of the Second Amendment to the McCray Trust executed on June 24, 2013, it is recommend that the matter be set for trial. The parties are **DIRECTED TO APPEAR** for the purpose of setting a trial date.