

DEPARTMENT TWENTY-TWO
JUDGE ALESIA JONES
707-207-7322

TENTATIVE RULINGS AND PROBATE PREGRANTS FOR
MATTERS SCHEDULED FOR
TUESDAY, MAY 23, 2017

ANNOUNCEMENTS

- **Probate Staff E-Mail Now Available**

Parties and attorneys with questions concerning probate notes and general probate procedures may now e-mail the court's probate staff at probate@solano.courts.ca.gov. *Do not e-mail attachments.* For security reasons, they will not be opened.

- **Probate Notes – Department 22**

Probate notes are available for Department 22 probate cases, except for conservatorships, at the following webpage:

<http://www.solano.courts.ca.gov/TentativeRulings/ProbateNotesandPregrants.html>

Probate notes will be available approximately one week prior to an individual case's hearing date, and will be updated as staff time permits.

Unless otherwise directed by the court, probate pregrants are not posted for guardianship matters or for ex parte petitions.

**PREGRANTS AND TENTATIVE RULINGS START ON
NEXT PAGE**

9:00 CALENDAR

**IN RE THE ESTATE OF JENNIE M. BARRY, DECEASED
FPR046205**

Petition for Settlement of Trust and Final Account of Personal Representative; for Final Distribution; and for Allowance of Statutory and Extraordinary Attorney's Fees and Costs

PREGRANT ORDER

The petition is granted with the following modifications:

- (1) The court accepts Attorney Michael Prevolos' withdrawal of his request for reimbursement of the certified mailing expenses.
- (2) In the absence of objections by beneficiary Pamela Barry to the attorney's lien filed by Jeff Klink on June 30, 2016, the court approves payment to Jeff Klink from Pamela Barry's distributive share in the amount of \$7,105 or Pamela Barry's entire distributive share, whichever is less.

**IN RE THE ESTATE OF MARIA REGINA RAMOS, DECEASED
FPR047951**

Petition Under California Probate Code Section 850 to Recover Estate Property

Response to Petition Under California Probate Code section 850 to Recover Estate Property

PREGRANT ORDER

The court on its own motion continues the hearing to Tuesday, June 6, 2017 at 9:00 a.m. in Department 22. Pending the continued hearing, the petitioner and the respondent shall each file a memorandum of points and authorities which addresses the court's jurisdiction to rescind a contractual beneficiary designation through a petition brought pursuant to Probate Code section 850 et seq.

**IN THE MATTER OF THE LUZVIMINDA BAUTISTA THATER 2014
REVOCABLE TRUST
FPR048046**

(1) Petition for Instructions to Confirm Brian Thater as Trustee; Determine that Michael Thater Resigned and Ceased to Act as Trustee; Determine that Michael Thater Lacks Authority to Bind or Act on Behalf of the Trust; Alternatively for Removal and Immediate Suspension of Michael Thater Power as Trustee and Appointment of Brian Thater as Special Interim Trustee

(2) Petition to Approve Settlement and Reform Trust; and Confirm Agent Under Power of Attorney

PREGRANT ORDER

The petition is granted in part and denied in part.

The court approves the terms of the settlement so far as they concern the Luzviminda Bautista Thater 2014 Revocable Trust. Therefore, the court approves Items 1, 3, 5, 8, 9, 11, and 13 through 31 of the Settlement Agreement and Mutual Release attached as Exhibit B to the petition. The court further orders the parties to comply with and carry out each of these terms. The court shall retain jurisdiction over the settlement per CCP section 664.6. The court authorizes and approves of the modification of the trust as set forth in the settlement.

The balance of the petition is denied without prejudice. Per Probate Code section 17200(a), “a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.” Relief concerning a power of attorney for the trustor personally, an advanced health care directive for a trust settlor, and the residence and care of a trust settlor does not concern the “internal affairs of the trust.” A petition to approve any settlement concerning such affairs must be filed separately in an appropriate proceeding.

**IN THE MATTER OF THE PHYLLIS MCKINEY LIVING TRUST
FPR048076**

(1) Petition for Instructions Under Probate Code section 17200; or, In the Alternative, Petition to Modify Trust under Probate Code §§ 15403 and 15409; Or, In the Alternative, Petition to Remove Trustee under Probate Code §§ 15642(b)(1), (4), and (9)

(2) Notice of Motion and Motion for Sanctions Supporting Declaration

(2) Response to Petition for Instructions Under Probate Code section 17200; or, In the Alternative, Petition to Modify Trust under Probate Code §§ 15403 and 15409; Or, In the Alternative, Petition to Remove Trustee under Probate Code §§ 15642(b)(1), (4), and (9)

(2) Reply of Randall Zaiontz to Notice of Motion and Motion for Sanctions Supporting Declaration

PREGRANT ORDER

The motion for sanctions under CCP section 128.7 is denied. The court finds that while Attorney Knight's delay in obtaining his client's verification for his client's pleadings violated Probate Code section 1021, the court is unpersuaded that such actions are violations of CCP section 128.7(b).

Counsel to appear on the petition for instructions.

IN RE THE MINOR'S COMPROMISE OF OSCAR ALEJANDRO LOYOLA, JR., A MINOR FPR048291

Petition to Approve Compromise of Disputed Claim

PREGRANT ORDER

The court on its own motion continues the hearing to Tuesday, June 27, 2017 at 9:00 a.m. in Department 22. Pending the continued hearing, the petitioner shall file an amended petition that resolves the following deficiencies:

1. The information presented in the petition is contradictory and confusing. It appears that the goal is to ensure payment to the minor in the amount of \$70,000.00 after payment of attorney fees and costs. Therefore, the amount reported for the minor's gross settlement must be sufficient to account for these expenses and permit a net \$70,000.00 recovery. The gross settlement appears to be \$70,000.00 plus \$20,339.72 in attorney fees plus \$4,685.21 in costs, for a total of \$95,024.93.
2. Petition, Item 2(a): The claimant's address is missing.
3. Petition, Items 11(a), (b): The amount listed is incorrect. Item 11 inquires as to the amount being paid to the claimant only. Elsewhere in the petition, it is revealed that the claimant is receiving \$70,000.00 net after payment of costs and attorney fees. The gross settlement amount, not \$1,000,000.00, needs to be stated in Item 11(a) and (b). The amount being paid to others is the subject of Item 12.
4. Petition, Item 17: All entries in Item 17 must be limited to the claimant's share of the settlement.

5. Petition, Item 18(f): As the attorneys are receiving attorney fees based on other parties' settlements, this answer should be "does" and the information should be listed in Item 18(f).
6. Petition, Item 21: Attachment 21 is missing.
7. Petition, Attachment 11: Attachment 11 states in part, "This petition seeks court approval of the apportionment of this award between Oscar Loyola, his daughter Cynthia Blanca Loyola, and the minor claimant, Oscar Alejandro Loyola, Jr." The petitioner does not explain on what basis the court has jurisdiction in a minor's compromise action to approve an allocation of a settlement among persons other than the minor.

IN RE THE ESTATE OF JEANNETTE A. BAILEY, DECEASED
SP026745

Second Account and Report of Successor Trustee of the Testamentary Trust Created Under the Will of Jeanette Ann Bailey for the Benefit of Keith Chalmers Bailey and Petitions for Approval of Account and Report and for Approval of Trustee's and Attorney's Fees

PREGRANT ORDER

The court on its own motion continues the hearing to Tuesday, June 6, 2017 at 9:00 a.m. in Department 22. Pending the continued hearing, the petitioner shall resolve the following deficiencies:

1. The supplement filed April 27, 2017 provides an amended summary of account and includes statements as to changes in specific schedules. A revised complete accounting with corrected schedules shall be filed with the court.