

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 1, Honorable Le Jacqueline Duong, Presiding
Mai Jansson, Courtroom Clerk

191 North First Street, San Jose, CA 95113
Telephone 408.882-2120

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

PROBATE LAW AND MOTION TENTATIVE RULINGS

DATE: September 11, 2024 TIME: 10:00 A.M.

*****NOTICE*****

**APPEARANCES IN DEPT. 1 MAY BE IN PERSON OR
REMOTE THROUGH MICROSOFT TEAMS**

PLEASE GO TO:

https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

**State and local Court Rules prohibit recording of court proceedings without
a Court order. This prohibition applies while on Microsoft Teams.**

Prevailing party shall prepare the order by e-file, unless stated otherwise below

**The court does not provide official court reporters for civil/probate law and motion
hearings. See court website for policy and forms for court reporters at hearing**

TROUBLESHOOTING TENTATIVE RULINGS

If do not see this week's tentative rulings, they have either not yet been posted or your web browser cache (temporary internet files) is accessing a prior week's rulings. "REFRESH" or "QUIT" your browser and reopen it, or adjust your internet settings to see only the current version of the web page. Your browser will otherwise access old information from old cookies even after the current week's rulings have been posted.

| LINE # | CASE # | CASE TITLE | RULING |
|------------------------|------------|--|---|
| LINE 1 | 19PR185997 | Estate of Nancy M. Sibley | Click on LINE 1 or scroll down for attached Tentative Ruling. |
| LINE 2 | 21PR189557 | Delia M. Sambo Living Trust dated 3/7/2006 | Click on LINE 2 or scroll down for attached Tentative Ruling. |
| LINE 3 | | | Click on LINE 3 or scroll down for attached Tentative Ruling. |
| LINE 4 | | | |

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 1, Honorable Le Jacqueline Duong, Presiding
Mai Jansson, Courtroom Clerk

191 North First Street, San Jose, CA 95113
Telephone 408.882-2120

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

PROBATE LAW AND MOTION TENTATIVE RULINGS

| | | | |
|------------------------|--|--|--|
| LINE 5 | | | |
| LINE 6 | | | |

Line 1

Case Name: The Estate of Nancy Sibley

Case No.: 19PR185997

Hearing date, time, and department: September 11, 2024 at 10:00 a.m. in
Department 1

INTRODUCTION

In May 2019, Perice Sibley (“Perice”) initiated this case by filing a petition for probate of the estate of her mother, Decedent Nancy Sibley (“Decedent”), who died testate in 2019. The will was allegedly executed on March 19, 2019. Decedent’s husband Hiram Sibley predeceased her in 2017.¹ On December 11, 2019, another of Decedent’s daughters, Carrie Elias (“Elias”), filed will contest challenging Decedent’s will which purportedly left Decedent’s entire estate to Austin Cody, Perice’s son. On May 5, 2020, Elias filed a competing petition for probate proffering a pourover will which left Decedent’s estate to the Hiram & Nancy Sibley Living Trust. On March 8, 2022, Elias filed a petition for return of property, claiming that Perice had committed elder abuse against Decedent and breached her duty as Decedent’s attorney-in-fact.

Perice was appointed special administrator in this case on July 17, 2020. On September 21, 2020, the parties stipulated to the appointment of a new special administrator, John Kessler.

On January 8, 2021, Perice’s counsel, Hopkins & Carley, filed a petition for extraordinary fees incurred while Perice was special administrator. The petition alleged that the fees were incurred while Perice served as administrator of Decedent’s estate. On May 28, 2021, Hopkins & Carley filed an amended petition. On June 25, 2021, Elias objected to the amended petition.

On March 11, 2024, Hopkins & Carley filed a supplemental petition reducing the amount of fees requested pursuant to an agreement with the current special administrator and submitting to the court the issue of the reasonableness of the compensation of one of its paralegals. On May 17, 2024, Elias filed a supplemental objection.

On June 7, 2024, the court (Hon. Lori Pegg) filed its written order following trial on Elias’s will contest. The court found that Perice procured the will via undue influence and that Decedent lacked the capacity to execute the will at the time it was signed.

The court requested supplemental briefing from Hopkins & Carley and Elias regarding the impact of the outcome of the court trial on the petition for extraordinary fees. Both parties provided supplemental briefing in accordance with the court's order.

DISCUSSION

Hopkins & Carley filed the instant petition for extraordinary fees in 2021. The petition seeks attorney fees for the work performed on behalf of Perice as special administrator pursuant to Probate Code sections 8547, 10811, 10830, and 10832.2

Elias initially objected to the petition on the following grounds: (1) the petition is premature under Probate Code section 8547; (2) the services for which compensation has been requested did not benefit the estate and exceeded the scope of the special administrator's appointment; (3) the services rendered were ordinary, rather than extraordinary, in nature; and (4) the amount of fees requested are unreasonably high. After the court trial on the Elias's will contest, Elias filed an additional objection, arguing that the outcome of the court's decision at trial impacted the court's determination regarding the fees.

Thereafter, the court requested supplemental briefing regarding the impact of the outcome of the trial on the request for fees. (See, e.g., *Estate of Schuster* (1984) 163 Cal.App.3d 337, 344 [one of the items the court considers in determining whether to award attorney fees for litigation is the success of that litigation].) Both parties provided their supplemental briefing. In her supplemental briefing, Elias contends that the petition remains premature because Perice's final account has not yet been settled.

I. Timeliness of the Petition

Elias contends that the petition is premature because Probate Code section 8547, subdivision (d) requires such a request to be made only after settlement of the final account of the special administrator. To date, the accounting Perice filed has not been settled. Hopkins & Carley argue that they may seek fees at this time pursuant to Probate Code section 10832. The court finds both parties' arguments unpersuasive.

No published authorities discuss section 8547, subdivision (d). However, the plain language of that subdivision does not limit the payment of attorney fees for a special administrator to after the final account has been settled. Section 8547, subdivision (d) provides, "Compensation of an attorney for extraordinary services to a special administrator may be awarded in the same manner and subject to the same standards as for extraordinary services to a general personal representative, except that the

award of compensation to the attorney may be made on settlement of the final account of the special administrator.” (Italics added.)

Notably, the statute provides that compensation to the attorney may be may on settlement of the final account. It does not indicate that it must or shall be made only on settlement of the final account. (Cf. § 8547, subd. (b) [“The compensation of the special administrator shall not be allowed until the close of administration, unless the general personal representative joins in the petition for allowance of the special administrator’s compensation or the court in its discretion so

allows.”], italics added.) Thus, it appears that the language Elias relies on should be read as allowing the payment of fees on settlement of the final account or at other times.

Section 10832 provides, “Notwithstanding Sections 10830 and 10831, the court may allow compensation to the personal representative or to the attorney for the personal representative for extraordinary services before final distribution when any of the following requirements is satisfied: (a) It appears likely that administration of the estate will continue, whether due to litigation or otherwise, for an unusually long time. (b) Present payment will benefit the estate or the beneficiaries of the estate. (c) Other good cause is shown.” (Formatting altered.) As mentioned above, section 8547, subdivision (d) provides, “Compensation of an attorney for extraordinary services to a special administrator may be awarded in the same manner and subject to the same standards as for extraordinary services to a general personal representative” Thus, it appears that, because the personal representative may be paid prior to final distribution, the special administrator may also be paid earlier assuming that the conditions for such an order are met.

In its petition filed in 2021, Hopkins & Carley sought early payment on the ground that the litigation is likely to continue for an unusually long time. Based on the complexities of this case and the contentious litigation that has occurred, it is likely that litigation will still continue for a significant period of time. However, Perice’s final account has been filed and the court received objections to that account from Elias. Thus, the mechanism for settling the account has been triggered.

Further, as Elias points out, the amount of ordinary fees ordered and the size of the estate are both to be considered in ordering fees for extraordinary services. (See *Estate of Hilton* (1996) 44 Cal.App.4th 890, 918-919.) But, the amount of ordinary fees has not been fixed at this time and the size of the estate may well have been impacted by the outcome of the trial as Elias succeeded on her will contest and the court found the will proffered by Perice to be invalid.

Hopkins & Carley stated in its initial petition, “It is anticipated that Special Administrator Kessler and his counsel will request extraordinary fees. . . . In the

event Carrie Elias prevails on her Will contest then assets could pass either Via intestacy or pursuant to the 2016 Trust if it is found valid. The pending litigation will affect ordinary fees.” (Petition, ¶ 13.) At this time, the will proffered by Perice has been invalidated but no determination has been made regarding whether the 2016 trust is valid. Thus, at this time, it is not clear whether assets will pass via trust or via intestacy and the size of the estate is not clear. The court declines to hear the petition until after the size of the estate has been determined.³

Hopkins & Carley also asserted in the initial petition ordering compensation for extraordinary services at that time would bring certainty to the costs of administration and the

availability of the fees to report as tax deductions. But, ordering compensation for extraordinary services prior to the settlement of the final account is discretionary. At this time, there is uncertainty as to many of the factors that would be considered by the court in ordering compensation from the estate for extraordinary services. It does not appear to the court that ordering any compensation Hopkins & Carley may be entitled to would be more beneficial to the estate if it occurred now as opposed to after Perice’s final account has been settled and after the size of the estate has been determined.

CONCLUSION

The court declines to order compensation for extraordinary services prior to the settlement of Perice’s final account and prior to the determination of the size of the estate. Proceedings on the petition are hereby stayed until Perice’s final account is settled and the size of the estate can be determined. The parties are ordered to contact the court for a hearing date once that has been determined. The parties are also ordered, at that time, to provide supplemental briefing, at least 20 days prior to the hearing, regarding the effect of these determinations on the outcome of the petition.

Calendar line 2

Case Name: The Delia M. Sambo Living Trust dated March 7, 2006

Case No.: 21PR189557

Hearing date, time, and department: September 11, 2024 at 10:00 a.m. in
Department 1

This case was initiated by Petitioner Jose Regino Sambo, Jr. (“Petitioner”), who filed a Petition to Prove Existence of Trust and to Confirm an Asset of the Trust (“the petition”). Petitioner contends that his sister, Decedent Delia Sambo (“Decedent”) created a trust and deeded her real property at 514 Lanfair Circle, San Jose to the trust. Respondent Bilal Ibnmuhammad (“Respondent”) currently lives in the property and denies the existence of the trust. Respondent filed an opposition to the petition in which he states that he was Decedent’s husband and that Decedent died intestate.

On May 20, 2024, the court held an evidentiary hearing on the petition and granted it, as memorialized in a written order filed that same day. The order found that Respondent acted in bad faith within the meaning of Probate Code section 859 (“section 859”). The order also provided that the court would consider Petitioner’s motion for reasonable attorney fees pursuant to section 859.

Currently before the court is Petitioner’s motion for attorney fees. The motion is unopposed. However, on July 11, 2024, Petitioner informed the court that Respondent had filed for bankruptcy and the automatic stay pursuant to 11 U.S.C. 362, subdivision (a) was now in effect. The hearing on the motion was continued to September 11, 2024. Petitioner has not informed the court that the automatic stay has been lifted either pursuant to his request for relief from the stay or by operation of law. Accordingly, the court lacks jurisdiction to hear the motion for attorney fees at this time.

The motion hereby is ORDERED OFF CALENDAR until such time as petitioner provides proof to the court that the automatic stay has been lifted. Petitioner must contact the court to schedule a new hearing date for the motion and provide proper notice of the new hearing date.

Calendar line 3

- oo0oo -

Calendar line 4

- 00000 -

Calendar line 5

- 0000 -

Calendar line 6

- oo0oo -

Calendar line 7

- 00000 -

Calendar line 8

- 0000 -

Calendar line 9

- 00000 -

Calendar line 10

Calendar line 11

Calendar line 12

- oo0oo -

Calendar line 13

- oo0oo -

Calendar line 14

- oo0oo -

Calendar line 15

- oo0oo -

Calendar line 16

- oo0oo --

Calendar line 17

- oo0oo -

Calendar line 18

- oo0oo -

Calendar line 19

- oo0oo -

Calendar line 20

- oo0oo -

Calendar line 21

- oo0oo -

Calendar line 22

- oo0oo -

Calendar line 23

- oo0oo -

Calendar line 24

- oo0oo -

Calendar line 25

- oo0oo -

Calendar line 26

- oo0oo -

Calendar line 27

- oo0oo -

Calendar line 28

- oo0oo -

Calendar line 29

- oo0oo -

Calendar line 30

- oo0oo -