

## **STATE OF THE PROBATE COURT: 2016 ANNUAL PRESENTATION BY JUDGE GLEN M. REISER**

At the end of May, Judge Glen M. Reiser, our sitting probate judge and the Judge of the Year, joined the Estate Planning and Probate Section to give our audience his annual update. His presentation covered a range of information, from new forms to recent case law effecting probate matters to local guidelines for attorney and paralegal fees. Here is some of what he had to share:

### **THE BIG NEWS: FEE ALLOWANCE INCREASE**

Judge Reiser announced that effective July 1, 2016, the court will increase the hourly rates allowed for attorneys and their paralegals. The existing maximum rate (\$350 per hour) will be increased to an hourly rate of \$360. Paralegals will be allowed a maximum hourly rate of \$180. Of course, that is the high-end of what he will allow. As always, Judge Reiser will continue to take into consideration the experience and expertise of the attorney in question, the size of the estate, and the complexity of the work involved. He also considers the quality and timeliness of the work being submitted.

### **LOCAL RULES:**

The board members of the Estate Planning and Probate Section have been working with Judge Reiser to overhaul and update our Local Rules. The changes have now been finalized. Our hope is to have the new rules in effect January 1, 2017.

### **NEW MANDATORY FORM:**

The Judicial Council has created a new Notice of Death (for conservatorships) form that will be required as of January 1, 2017. The Counsel has also updated DE-111 (Petition for Probate) to include a citizenship option and language addressing a lost Will (also to be effective January 1, 2017). The forms can be found on the Judicial Council website at <http://www.courts.ca.gov/forms.htm> after January 1.

### **JUDGE REISER'S CONTINUED TENURE:**

Judge Reiser hopes to remain on the probate bench until his expected retirement. If all goes as expected, he will remain the sitting probate judge for another three years. His potential replacement is not known at this time, although many are hopeful Judge Lund will be given the assignment based upon his many years of probate experience.

### **PROBATE CODE CHANGES:**

The new code sections addressing a Transfer On Death Deed were also discussed. While Judge Reiser provided some very colorful illustrations of the issues and concerns surrounding these new laws, I believe his description can be summed up in one quote. Judge Reiser summarized the new code sections as "a total mess." He certainly is not alone in that opinion.

## CASE LAW:

Judge Reiser noted that published opinions on probate cases are becoming more prevalent. He chose to focus on three fairly recent cases. These cases were *Babbitt v. Orange County Superior Court*, *Carne v. Worthington*, and *Conservatorship of Bower*.

*Babbitt* is a trust case involving a demand for an accounting by the daughter of the decedent. Decedent was remarried and his surviving spouse – not surprisingly – was not on good terms with his daughter. The trial court in *Babbitt* ordered the surviving spouse, who was serving as trustee of the decedent's trust, to account for a period prior to her husband's death. The surviving spouse, however, was successful in obtaining a Writ which stated the daughter was *not* entitled to an accounting for the period prior to the decedent's death. In sum, absent allegations of lack of capacity or undue influence, there is no duty to account during the period of time which the trust remains revocable. Judge Reiser noted that this reasoning seems to follow the same principles laid out in *Giraldin*.

*Carne* is also a trust case. It involves a complicated history of multiple trusts left behind by the decedent. When the decedent died, his real property was titled under a 1985 trust that was unfavorable to the petitioning party, Carne. Carne sought to have title to the real property confirmed under a trust which was more favorable to her as a beneficiary. The decedent's grandson, who was heavily favored under the 1985 trust, objected.

The grandson's objections were based mainly upon the fact that at the time the decedent listed the real property in question as an asset of the trust favoring Carne, the decedent did not hold title as an individual. Rather, he held title as trustee of the 1985 trust. Thus, the grandson argued, the inclusion of the real property on the list of assets for the trust favoring Carne was not subject to *Hegstad* principals because the decedent did not hold title as an individual and did not purport to transfer title as trustee from one trust to another.

The trial court ruled in favor of the grandson, adopting his objections. Carne appealed. The Court of Appeal found that the language in the trust favoring Carne was sufficient to transfer title of the real property and no separate deed was required to accomplish said transfer. In essence, the Court of Appeal viewed the trust language as a "conveyance" equivalent to a deed. Judge Reiser noted that this line of cases seems to be ever-expanding *Hegstad* and should be carefully considered by both drafting and litigating attorneys practicing in this area of law.

Finally, Judge Reiser also discussed *Conservatorship of Bower*. *Bower* involved a conservatee who was cut-off from his estate by his spouse. The conservatee's sister was eventually appointed as his conservator. It was a long fight and many attorney fees (and conservator fees) were incurred in the process. The trial court ordered the wife to pay the attorney and conservator fees from the conservatee's half of the community property, which was under the wife's management and control. Wife refused (repeatedly) and appealed.

The Court of Appeal overturned the trial court. The Court recognized a duty to support the conservatee, but did not agree that said duty extends to payment of conservator and attorney fees. The

Court of Appeal noted that conservatee support is not equivalent to conservatorship maintenance. As such, the trial court did not have jurisdiction to order that the conservatee's wife pay the fees related to the conservatorship from the community estate, despite the obvious benefit those services provided to the conservatee.

The Estate Planning and Probate Section is fortunate to have Judge Reiser make himself available, year after year, for these annual updates. On behalf of our Section, I would like to thank him for his time. We look forward to hearing from him again next year.

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