

STATE OF THE PROBATE COURT: 2015 ANNUAL PRESENTATION BY JUDGE GLEN M. REISER

Our section was once again honored to welcome Judge Glen M. Reiser, our sitting probate judge, when he recently gave us his annual update on Probate Court matters. Here is some of what he had to share:

THE BIG NEWS: FEE ALLOWANCE INCREASE

Judge Reiser announced that he has given the attorneys seeking court-approved fees a raise. The existing maximum rate (\$340 per hour) has been increased to an hourly rate of \$350. 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:

Judge Reiser has encouraged our section to review and evaluate our Local Rules. Although he has been “tweaking” them slowly, he feels it is now time for a major overhaul. He has suggested that we take into consideration the Local Rules of other counties in the State. Our Executive Committee will be doing just that and hopes to present Judge Reiser with our findings within the next few months.

NEW MANDATORY FORM:

His honor reminded us about the new DE-142 – a mandatory form to waive bond. The form can be found on the Judicial Council website at <http://www.courts.ca.gov/forms.htm>.

NEW PRACTICE GUIDE:

The audience was reminded (or informed, if they had not already known) about the new CEB Fiduciary Accountings practice guide. It seemed to be a not-so-subtle hint that we should take notice of the new materials, as well as take a few moments to make certain our court accountings are in compliance with statutory guidelines. Certainly more than a few practitioners were taking notes and considering adding the new guide to their collection after hearing his honor’s comments.

PROBATE CODE CHANGES:

Judge Reiser discussed in detail the newly adopted Interstate Jurisdiction Act. The Act extends the jurisdiction and powers of the courts in states where the Act has been adopted to allow for better control over certain conservatorship cases. The new Act will especially be useful when a conservatee has been moved to another state. His honor acknowledged that while these cases may be rare for local practitioners, the Act could be very helpful in you happen to find yourself (via a client, hopefully) in such

a case. In particular, the sanctions allowed under the Act could help motivate the return of a conservatee or a stipulated agreement amongst warring parties.

COMMON LAW:

Judge Reiser indulged the requests of the Executive Committee to discuss a new case involving Heggstad and Kucker principals. The case is *Ukkestad v. RBS Asset Finance* from the 4th District. Judge Reiser engaged the audience in a thoughtful discussion of the basis and holding of the case, then encouraged us to think about what implications the case could have. It was an interesting interaction and many audience members seemed to have changed their opinion about the case once the discussion was completed.

Finally, his Honor reviewed what he referred to as the “trilogy” of cases involving testamentary capacity. His thorough analysis included a comparison of statutory definitions and guidelines (including the apparent contradictions) and “trilogy” cases of *Marriage of Greenway*, *Andersen v. Hunt*, and *Lintz v. Lintz*. *Greenway* presents us with a “sliding scale” of capacity which holds that the entering into marriage requires the lowest level of capacity, followed by testamentary capacity and, the highest level, contractual capacity (required for power of attorneys, deeds; etc.). As you can imagine, hearing that the level of capacity required to legally enter into a marriage is even lower than testamentary capacity brought quite a few laughs from the audience. In comparison, *Andersen v. Hunt* essentially holds that a “simple” amendment, although technically part of a trust (which requires contractual capacity), only requires testamentary capacity. Judge Reiser opined that a “simple” trust amendment would be limited to circumstances such as a beneficiary change, a distributive percentage change, and adding or subtracting property from a gift. In conclusion, Judge Reiser discussed *Lintz*. *Lintz*, in some ways, simply confirmed the holding in *Hunt* by stating that a more complicated restatement requires full contractual capacity. His Honor urged us all to keep the “trilogy” in mind when drafting for our clients.

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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