

TENTATIVE RULINGS

FOR: September 17, 2018

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. Victoria Wood, Dept. C (Historic Courthouse) at 2:00 p.m.

In The Matter Of The Carpy Trust

26-38094

PETITION REGARDING THE INTERPRETATION OF TRUST INSTRUMENTS AND FOR INSTRUCTIONS

APPEARANCE REQUIRED. The Court is inclined to find that a flat 25% portion of the estate tax liability is not appropriately attributed to the 25% Subtrusts. The Settlement Agreement provides: “the Trustee of the 25% SUBTRUSTS shall pay (i) all death taxes due on account of the death of ANN that are attributable to assets that are part of the 25% SUBTRUSTS[.]” (Settlement Agreement at para. 2(b)(iii)(E).) The 25% distribution from the sale of the TIC/LLC Interests is not part of the 25% Subtrusts at this time. If no sale occurs during Mr. Carpy’s lifetime, the 25% distribution will never become a part of the 25% Subtrusts. (Settlement Agreement at para. 2(b)(ii)(F).) The 25% Subtrusts do not hold a full 25% of the estate’s value.

Probate Code section 20113 appears to apply: the 25% Subtrusts’ right to income from the TIC/LLC Interests and potential right to distribution is an “other temporary interest” in property. However, that would mean the possible 25% distribution from the TIC/LLC Interests is part of the trust corpus, and therefore 25% of the TIC/LLC Interests is responsible for its proportionate share of the estate taxes. As the 75% Subtrusts currently hold the entirety of the TIC/LLC Interests (other than any income payments that may be made), the 75% Subtrusts should pay the estate taxes attributable to the TIC/LLC Interests. If the TIC/LLC Interests are sold during Mr. Carpy’s lifetime, the 25% distribution to the 25% Subtrusts should, at that time, be offset by the then-value of the estate tax payment made by the 75% Subtrusts attributable to the 25% share of the TIC/LLC Interests being distributed.

The parties should be prepared to address at the hearing whether there are any issues that would preclude the Court from making an order for payments to be made as described above.