Trusts and Estates
Symposium 2015

People Behaving Badly:
Ethical Considerations for the Probate Bar and Trust Contest Strategies

Friday, September 25, 2015
12:45 - 4:30 PM
The Los Angeles County Bar Association
Los Angeles, CA

3.0 hours CLE credit, including 2.0 hours Ethics Credit, and 3.0 hours Estate Planning, Trust & Probate Law

Provider #36

The Los Angeles County Bar Association is a State Bar of California approve MCLE provider. The Los Angeles County Bar Association certifies that this activity has been approved for MCLE credit by the State Bar of California.
Panel 1:
Who Am I Representing? A Slippery Slope with Significant Risks

Speakers:

Marshal A. Oldman, Oldman, Cooley, Sallus, Gold, Birnberg, & Coleman, LLP
James Ham, Pansky, Markle, Ham, LLP
Daniel B. Herbert, Manning & Kass, Ellrod, Ramirez, Trester, LLP
Who is the client? All serious discussions of professional responsibility begin with this question. E.g., *Guide to the California Rules of Professional Conduct for Estate Planning, Trusts, and Probate Counsel*, State Bar of California, Trusts & Estates Section (3d ed., 2013), page 12; *California Trust and Probate Litigation* (CEB 2015), §3.3; *Ethics: Tales of Brave Attorneys* (Los Angeles County Bar Association, Trusts & Estates Symposium (2011), page 2.

There is often little doubt in other practice areas, where there is usually either one client at a time, or multiple clients with more-clearly aligned or defined interests.

In trusts and estates, however, attorneys commonly represent, or are expected to represent, several parties at once, such as husbands and wives, domestic partners, and other family members, often of differing generations or relatedness. Considering the varying capacities of any one client - fiduciary, beneficiary - and the varying persons holding a given capacity - successor fiduciaries, contingent beneficiaries - further complicates the question. Add to that the rule that “client” includes anyone who reasonably believes they are a client (*Butler v. State Bar*, 42 Cal.3d 323, 329 (1986), and the situation becomes downright murky. And it does not help the situation for attorneys representing fiduciaries to say or believe they are representing a trust or estate (they are not), because, among other reasons, unsophisticated beneficiaries often assume these attorneys will be protecting their interests as well.

Given the confusion and potential repercussions, it is important to answer this question right away, ideally no later than the initial client interview. Important duties including loyalty, confidentiality, and avoiding adverse interests, are implicated at the outset, and may be inadvertently or carelessly breached when the attorney-client relationship is not clearly defined and understood.

I represent the family? It was once more common to hear estate attorneys say they represent “the family,” and in fact there were and are legitimate reasons for representing multiple parties in many estate planning circumstances. Indeed, multiple representation has been practically encouraged by leading authorities. As eloquently stated by the American College of Trust and Estate Counsel (ACTEC) a few years ago:

"It is often appropriate for a lawyer to represent more than one member of the same family in connection with their estate plans, more than one beneficiary with common
interests in an estate or trust administration matter, or more than one of the investors in a closely held business. See ACTEC Commentary on MRPC 1.6 (Confidentiality of Information). In some instances the clients may actually be better served by such a representation, which can result in more economical and better coordinated estate plans prepared by counsel who has a better overall understanding of all of the relevant family and property considerations. The fact that the estate planning goals of the clients are not entirely consistent does not necessarily preclude the lawyer from representing them: Advising related clients who have somewhat differing goals may be consistent with their interests and the lawyer's traditional role as the lawyer for the 'family'. Multiple representation is also generally appropriate because the interests of the clients in cooperation, including obtaining cost effective representation and achieving common objectives, often clearly predominate over their limited inconsistent interests. Recognition should be given to the fact that estate planning is fundamentally non-adversarial in nature and estate administration is usually non-adversarial."


Nonetheless, while it is often appropriate to represent a husband and wife, parents and children, siblings, or other members of the family (with full disclosure and waiver of potential conflicts of interest), it is rarely if ever accurate to say we represent the family in modern times.

**Representing trusts and estates.** Trusts and estates are not legal entities; they have no legal capacity; they cannot, for example, sue or be sued. Weil & Brown, *Cal. Practice Guide, Civ. Pro. Before Trial* (TRG 2015), §2:126. The trusts and estates lawyer must represent a person (including entities, though not commonly) instead, such as an executor, administrator, or trustee.
LACBA Trusts and Estates Symposium

James I. Ham, Speaker

Summary of Rules and Cases

- Client Identity is a Paramount Issue

  *Butler v. State Bar,* (1986) 42 Cal.3d 323, 329: “The attorney’s duty to communicate with a client includes the duty to communicate to persons who reasonably believe they are clients to the attorney’s knowledge at least to the extent of advising them that they are not clients.”

- Conflict Waivers Must Be Obtained Whenever Attorney Represents Multiple Clients
- Rule 3-310

Rule 3-310 Avoiding the Representation of Adverse Interests

(A) For purposes of this rule:
  1. "Disclosure" means informing the client or former client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client or former client;
  2. "Informed written consent" means the client's or former client's written agreement to the representation following written disclosure;
  3. "Written" means any writing as defined in Evidence Code section 250.

(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:
  1. The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or
  2. The member knows or reasonably should know that:
     a. the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and
     b. the previous relationship would substantially affect the member's representation; or
  3. The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or
  4. The member has or had a legal, business, financial, or professional interest in the subject matter of the representation.

(C) A member shall not, without the informed written consent of each client:
  1. Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
  2. Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

(D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.

(E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

(F) A member shall not accept compensation for representing a client from one other than the client unless:

1. There is no interference with the member's independence of professional judgment or with the client-lawyer relationship; and
2. Information relating to representation of the client is protected as required by Business and Professions Code section 6068, subdivision (e); and
3. The member obtains the client's informed written consent, provided that no disclosure or consent is required if:

   California Rules of Professional Conduct, rule 3-310 precludes the representation of even potentially conflicting interest, absent written disclosure and consent, each time the lawyer represents multiple clients in the same or related matters. Rule 3-310(C) prohibits an attorney from representing a client whose interests are either actually or potentially adverse to a present client’s interest, unless the attorney obtains the informed written consent of each client. In Flatt v. Superior Court (1994) 9 Cal. 4th 275, the California Supreme Court held that a conflict is presented if a lawyer is simultaneously representing a client and the client’s adversary, even if the matters are unrelated. See id. at 285. (“A client who learns that his or her lawyer is also representing a litigation adversary, even with respect to a matter wholly unrelated to the one for which counsel was retained, cannot long be expected to sustain the level of confidence and trust in counsel that is one of the foundations of the professional relationship. All legal technicalities aside, few if any clients would be willing to suffer the prospect of their attorney continuing to represent them under such circumstances.”). Furthermore, “[w]hen a client engages the services of a lawyer in a given piece of business he is entitled to feel that, until that business is finally disposed of in some manner, he has the undivided loyalty of the one upon whom he looks as his advocate and his champion.” Id. at 286. “It is also an attorney's duty to protect his client in every possible way, and it is a violation of [the duty of loyalty] for him to assume a position adverse or antagonistic to his client without the latter's free and intelligent consent given after full knowledge of all the facts and circumstances. [Citation.] By virtue of this rule an attorney is precluded from assuming any relation which would prevent him from devoting his entire energies to his client's interests. Nor does it matter that the intention and motives of the attorney are honest.” Id. at 289. [Emphasis in original.]

- **Advance Waivers of Prospective Conflict of Interest**
• Waivable v. Unwaivable Conflicts of Interest:

Where multiple clients are actually adverse to one another, the conflict of interest is unwaivable if the attorney cannot provide competent representation to each client. In such a case, the duty to provide competent representation, as described in CRPC rule 3-110 takes precedence over the attorney’s ability to obtain a conflict waiver, as no client could give informed consent to a lawyer’s provision of incompetent services. The Flatt court acknowledged that “joint representation of parties with conflicting interests impairs each client's legitimate expectation of loyalty that his or her attorneys will devote their “'entire energies to [their] client's interests.’” (Flatt, supra, at p. 289.)” Id. at 1355.

“If there is informed written consent, an attorney cannot represent two or more clients at the same time whose interests conflict. In cases where an attorney concurrently represents two clients with conflicting interests, the automatic-disqualification rule applies. (Flatt, supra, 9 Cal.4th at p. 284.)” Id. at 1356.

• Confidentiality Issues

Where two or more clients are jointly represented in the same matter, however, all confidential information is shared between the joint clients. See, California Evidence Code § 962. This means that if one client has confidential information that the client does not want to be shared with the other client, then separate legal counsel should be retained.

The duty to maintain clients secrets and confidences in California is much broader than the Evidentiary privilege set forth in Evidence Code sections 952 et seq. See, Business & Professions Code §6068(e).

• Attorney-Client Privilege Extends Past Client’s Death


• Standard of Care v. Duty under 3-110

Rule 3-110 Failing to Act Competently

(A) A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

(B) For purposes of this rule, "competence" in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.
(C) If a member does not have sufficient learning and skill when the legal service is undertaken, the member may nonetheless perform such services competently by 1) associating with or, where appropriate, professionally consulting another lawyer reasonably believed to be competent, or 2) by acquiring sufficient learning and skill before performance is required.
RELEVANT MALPRACTICE CASES FOR ESTATE PLANNERS

The following cases are relevant to the discussion regarding estate planning malpractice:

1. Biakanja v Irving (1958) 49 Cal2d. 647. A notary who mishandled the execution of a will was found liable for malpractice to the beneficiaries of the will when it was denied probate due to lack of due execution.

2. Lucas v Hamm (1960) 56 Cal2d 583. Finding that the lack of privity of contract should not be a bar to malpractice claims by beneficiaries against the testator’s drafting attorney, the court ruled that the matter could proceed as a malpractice case. The benefits under the will failed due to the an “administrative contingency” which violated the Rule Against Perpetuities.

3. Heyer v Flagg (1969) 70 Cal2d 223. The court found that the beneficiaries could sue testator’s attorney improper drafting of deceased spouse’s trust which caused it to be included in the taxable estate of the surviving spouse (the power of appointment was general).

4. Bucquet v Livingston (1976) 57 CalApp3d 914. The court revisited the balancing factors to determine that testator’s attorney owed a duty to the beneficiaries under instrument.

5. Radovich v Locke-Padeen (1995) 35 CalApp4th 946. The court used the balancing test to determine that imposition of a duty on counsel because the testator did not sign an instrument would impose too great a burden on the legal profession. The court expressed the concern that imposing a duty would cause attorneys to pressure testators to sign instruments before they are ready and would compromise the attorney’s duty of loyalty to the testator.

6. Boronian v Clark (2004) 123 CalApp4th 1012. The court found that the attorney should exercise his own judgment as to the capacity of the testator to sign an instrument and determined that imposing a duty would impose too great a burden on the legal profession.

7. Osornio v Weingarten (2004) 124 CalApp4th 304. The court imposed a duty on testator’s counsel to advise the testator of the need to obtain a certificate of independent review for a bequest to a caregiver.

8. Borissoff v Taylor-Faust (2004) 33 Cal4th 523. The attorney for the original trustee may be sued for malpractice by the successor trustee.

9. Chang v Lederman (2009) 172 CalApp4th 67. The court declined to impose a duty when counsel believed that his client was subject to the undue influence of his fiancee and refused to prepare the requested documents.

10. Paul v Patton (4/9/2015) H040646, Santa Cruz County. Court finds a duty when testator’s attorney failed to draft the instrument to provide for beneficiaries in accordance
with testator’s wishes.

**BALANCING FACTORS**

The six balancing factors employed by the court to determine if an attorney owes a duty to the beneficiaries of a testator who was his client:

1. The extent to which the transaction was intended to affect the plaintiff (beneficiary)
2. The foreseeability of harm to the plaintiff;
3. The degree of certainty that the plaintiff suffered injury;
4. The closeness of the connection between the defendant’s conduct and the injury;
5. The policy of preventing future harm; and
6. Whether the imposition of a duty would impose an undue burden on the profession.
SCENARIO FOR L.A. COUNTY BAR SYMPOSIUM

Algernon Codger, aged 80, marries a retiring exotic dancer known in the trade as Trixie, aged 39. Algernon holds a number of patents is believed to be worth $150,000,000. He also has two children from a prior marriage which ended with his wife’s demise several months before his current marriage.

Shortly after marriage, the happy couple embark on a lengthy honeymoon on his newly purchased private yacht, a wedding present for his bride. He leaves his business interests in the hands of his manager, attorney, and accountant. Trixie also embarks on a spending spree that costs Algernon several millions for jewelry and other items especially coveted by her.

Upon return from the honeymoon, Algernon prepares a new trust that provides his bride with 25% of his estate and places his attorney (I. M. Trusty) and accountant (I. R. Sanders) in charge as trustees.

Approximately 3 months later, the trust is amended by Trusty to give his new wife 50% of the estate. She is also named as a co-trustee along with Trusty and Sanders. Trusty speaks to Algernon over the phone but never meets with him. The documents are sent by mail to Algernon who signs them and returns a copy to Trusty for his file.

Three months thereafter, Algernon suffers a stroke that affects his frontal lobe and his executive functioning. On initial presentation, Algernon appears mentally capable. However, discussion over any length of time shows his forgetfulness and his inability to analyze complex problems. Trixie calls Trusty and makes an appointment to meet with him. She brings him up to date regarding Algernon’s condition. Trusty calls Algernon at home where he is confined by the effects of his stroke. Trusty asks Algernon whether he should work with Trixie regarding his substantial and complex affairs. Algernon says yes.

Over the next several months, Trixie is placed on the board of directors of Algernon’s various corporations and also named as manager of an LLC that controls Algernon’s property holdings. This is accomplished over several meetings with Trusty who is growing increasingly comfortable with Trixie. She assures Trusty that Algernon wants to name her as his agent under a power of attorney and a health care directive. Without speaking or meeting with Algernon, these documents are prepared and given to Trixie to have them signed. In due course, copies as signed by Algernon are given to Trusty. He notices that the signatures are largely illegible but he attributes this to Algernon’s stroke.

A few months later, Trixie comes to Trusty’s office and states that Algernon now wants to make her the sole lifetime beneficiary of the half of the trust not previously given to her in which she will be entitled to all net income and to principal distributions for health, education, maintenance and support. Additionally, she is to have a special power of appointment so that she can allocate the benefits of the trust among Algernon’s issue and such charities that she desires. Because of the change of terms, Trusty determines that a restatement of the entire trust is needed and produces one on his usual form that amounts to 60 pages outlining the terms of the various
sub-trusts and the powers of the trustee.

Due to the extensive changes, Trusty determines that he should speak directly to Algernon. He attempts to call the residence and speak with him. The caregiver hired by Trixie informs Trusty that Trixie has left strict orders that no one is allowed to speak with Algernon so that his needed rest is not disturbed. Trusty attempts to speak with Trixie to set up a meeting with Algernon but is unsuccessful. Trusty determines that he should prepare the document. When ready, Trusty emails Trixie, and she comes by the office to pick up the document. Later, a copy of the document as signed by Algernon is sent to Trusty’s office.

Shortly thereafter, Algernon dies. Trixie, Trusty, and I.R. Sanders commence acting as trustees. The notice required under Probate Code 16061.7 is sent to the beneficiaries and next of kin. The children hire counsel and commence litigation. After extensive litigation, a contest of the trust is sustained and all amendments and restatements after the marriage to Trixie, except for the first document are found to be invalid. Trusty is sued by Trixie and by the children for malpractice.
Panel 2:
Strategies for Contesting and Defending Trust Instrument

Speakers:
Lauriann Wright, Wright, Kim, Douglas, A Law Corporation
Robert C. Eroen, Eroen Law Firm
Although this outline addresses how to build a Trust Contest case in the context of the seminar’s hypothetical, it should also provide helpful guidance for the preparation of a Will Contest or other disputed probate court petition for trial.

I. PREPARING THE TRUST CONTEST PLEADING

A. CALENDAR CONTEST DEADLINE: Per Probate Code §16061.7, within 120 days of trust notification -or- 60 days after terms of trust mailed or personally delivered to beneficiary, whichever is later.

B. DISCUSS NO CONTEST CLAUSE WITH CLIENT: Amendment #2 of Hypo should definitely be challenged because Candy gets nothing under it. But attorney should discuss with Candy whether to contest Amendment #1 as she still gets 50% of remainder. Does she want to risk losing that if she loses Trust Contest as to Amendment #1?

C. OBTAIN COMPLETE TRUST TERMS: If Trust Notification was not served with a copy of all of the Trust terms, write demand letter to RANDY Snarl requesting complete trust terms. If he refuses, be sure to reference in Trust Contest.

1. ALWAYS READ THE TRUST CAREFULLY! Particular issue or defense may be specifically addressed in the Trust.

2. PRACTICE TIP - DO MEMO OF KEY TRUST TERMS: At beginning of case, go through Trust, section by section, and summarize in a memo called Key Trust Terms. When issue comes up in litigation, instead of having to comb through Trust again, you can go to this Memo to quickly locate particular section that applies and its terms.
D.  **TIMELINE**

1. Prepare a timeline of the key facts and documents in your case. A sample Timeline based on this Seminar’s Hypo is provided at [APPENDIX 2](#).

2. Continue to build on your Timeline as the evidence comes in. E.g. key medical records entries relating to capacity; any large withdrawals from bank accounts. Have a print-out of the Timeline with you at all important hearings, depositions, and trial. Provide to the mediator as an exhibit to your Mediation Brief.

E. **RUN BACKGROUND CHECK ON RESPONDENT:** I run a Smartlinx Report on Lexis on Respondent. Look for any criminal history, judgments, suspended licenses, other real estate owned (check title to see if Respondent also inherited it), or anything else suspicious.

F. **RELIEF TO INCLUDE:** Sample Trust Contest Pleading provided at [APPENDIX 3](#). Must be verified. Probate Code §1021(a).

1. **TRUST CONTEST:**

   a. Undue influence and/or lack of capacity (always work together; rarely is there one without the other)

   (1) There is now a NEW Undue Influence Code Section. Prob. Code §86 now references W&I §15610.70 for definition of Undue Influence and states that that section shall “supplement the common law meaning of undue influence without superseding or interfering with the operation of that law.”

   (2) 15610.70(a): "Undue influence" means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity.” Then references the following factors to be considered:

      (1) The vulnerability of the victim.
      (2) The influencer's apparent authority.
      (3) The actions or tactics used by the influencer.
      (4) The equity of the result.
(b) Evidence of an inequitable result, without more, is not sufficient to prove undue influence.

b. §21380: Is Respondent a disqualified person? Was a Certificate of Independent Review required?

(1) §21380(a) sets up six categories of persons to whom a provision of an instrument making a donative transfer to any of the following persons is presumed to be the product of fraud or undue influence:

(a) *The person who drafted the instrument.
(b) A person in a fiduciary relationship with the transferor who transcribed\(^1\) the instrument or caused it to be transcribed\(^2\).
(c) A care custodian\(^3\) of a transferor who is a dependent adult, but only if the instrument was executed during the period in which the care custodian provided services to the transferor, or within 90 days before or after that period.
(d) A person who is related by blood or affinity, within the third degree, to any person described in (a), (b), or (c), inclusive.
(e) A cohabitant or employee of any person described in (a) to (c), inclusive.

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\(^2\) “Cause to be transcribed” refers only to the person who directs, oversees, or otherwise participates directly in the instrument’s transcription. *Rice v. Clark* (2002) 28 Cal.4th 89, 105.

\(^3\) Probate Code §21362(a) defines “Care custodian” as “a person who provides health or social services to a dependent adult, except that "care custodian" does not include a person who provided services without remuneration if the person had a personal relationship with the dependent adult (1) at least 90 days before providing those services, (2) at least six months before the dependent adult's death, and (3) before the dependant adult was admitted to hospice care, if the dependent adult was admitted to hospice care. As used in this subdivision, "remuneration" does not include the donative transfer at issue under this chapter or the reimbursement of expenses.” Subsection (b) defines "health and social services" as “services provided to a dependent adult because of the person's dependent condition, including, but not limited to, the administration of medicine, medical testing, wound care, assistance with hygiene, companionship, housekeeping, shopping, cooking, and assistance with finances.”
(f) A partner, shareholder, or employee of a law firm in which a person described in the statute has an ownership interest.

(2) Presumption established by §21380 affects the burden of proof. May be rebutted by clear and convincing evidence that the transfer was not the product of fraud or undue influence.

(3) *With respect to a donative transfer to the person who drafted the donative instrument, or to a person related to, or associated with, the drafter as under (d), (e), or (f) the presumption created by this section is conclusive and cannot be rebutted.

(4) If a beneficiary is unsuccessful in rebutting the presumption, he/she shall bear all costs of the proceeding, including reasonable attorney’s fees.

2. §850 CLAIMS: Rarely is there just a bare trust contest in the fact pattern. Usually the Respondent begins their undue influence with taking money while Settlor is still alive. If you do not have enough evidence to assert a §850 claim in the beginning, be prepared to have to bring a separate §850 petition later if such evidence is discovered later during discovery.

a. §850 is just a probate mechanism to bring underlying civil claims in probate court: When a petition is brought under Section 850, the issues include whether the decedent died having a claim to real or personal property, title to or possession of which is held by another [or, in trust matters, where the trustee has a claim that trust property is in the possession of another]. *Estate of Young* (2008) 160 Cal.App.4th 62, 86. Pursuant to Section 855, actions so brought may include claims, causes of action, or matters that are normally raised in a civil action to the extent that the matters are related factually to the subject matter of a petition filed under section 850. *See Id.*

under Prob. Code §850. Section 366.2 applies only to liability of a person. A claim to determine title to property is not liability of a person. To arrive at this conclusion, Court found additional support in Prob. Code §9000 which defines a “claim” for purposes of a creditor’s claim and excludes any dispute over a decedent’s title to specific property.

c. Alleged that actions taken during Settlor’s life amount to elder financial abuse and allege recovery of attorney’s fees pursuant to Welfare & Institutions Code §15657.5.


(2) And don’t forget Probate Code § 259. “(a) Any person shall be deemed to have predeceased a decedent to the extent provided in subdivision (c) where all of the following apply:
(1) It has been proven by clear and convincing evidence that the person is liable for physical abuse, neglect, or financial abuse of the decedent, who was an elder or dependent adult.
(2) The person is found to have acted in bad faith.
(3) The person has been found to have been reckless, oppressive, fraudulent, or malicious in the commission of any of these acts upon the decedent.
(4) The decedent, at the time those acts occurred and thereafter until the time of his or her death, has been found to have been substantially unable to manage his or her financial resources or to resist fraud or undue influence.”

d. WATCH OUT for *Drake v. Pinkham* (2013) 217 Cal.App.4th 400 trap. If Settlor is incompetent and there is NO ONE CURRENTLY holding power to revoke, then remainder beneficiaries could be barred by LACHES if they do not take action and file breach of fiduciary duty trust action.

e. If there are other recipients of converted Trust monies consider suing them under §850 as well.
(1) Money may be the subject of a conversion action only when the money can be described or identified as specific property, since conversion deals with interference with property. *Shahood v. Cavin* (1957) 154 Cal.App.2d 745, 748. While money must be in a specific sum capable of identification, it is not necessary that each coin or bill be earmarked; it is sufficient if a definite sum is involved. *Haigler v. Donnelly* (1941) 18 Cal.2d 674, 681; *Weiss v. Marcus, supra*, 51 Cal.App.3d at 599.

(2) With respect to third parties, unless one is an innocent purchaser for value and without notice, one who accepts goods from a fraudulent possessor is also liable for conversion. *Oakdale Village Group v. Fong* (1996) 43 Cal.App.4th 539, 549.

(3) NOTE: Cannot sue for conversion of real property.

“Conversion is generally described as the wrongful exercise of dominion over the personal property of another. (*Gruber v. Pacific States Sav. & Loan Co.* (1939) 13 Cal.2d 144, 148, 88 P.2d 137.) The basic elements of the tort are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages. (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066, 80 Cal.Rptr.2d 704.)” *Fremont Indem. Co. v. Fremont Gen. Corp.* (2007) 148 Cal. App. 4th 97, 119.

(4) WATCH OUT: The recent *Jenkins v. Teegarden* (2014) 230 Cal.App.4th 1128, 1142-43 case defined “donative transfer” for purposes of the former Probate Code §21350 as not only a transfer for zero consideration, but also a transfer for unfair or inadequate consideration under the circumstances.

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3. **ACCOUNTING**

a. Seek an accounting as far back as you suspect wrongdoing by the Respondent, even if prior to Settlor’s death. Remainder beneficiaries are no longer limited to just acts and transactions which occurred after date of death. Remainder beneficiaries gain standing to sue when their interests vest upon the settlor’s death. *Estate of Giraldin* (2012) 55 Cal. 4th 1058, 1062. After the settlor has died, beneficiaries can sue the trustee for a breach of fiduciary duty owed to the settlor "to the extent that breach harmed the beneficiaries." *Id.* at 1076. This is because a breach during the settlor's life "can substantially harm the beneficiaries by reducing the trust's value against the settlor's wishes." *Id.* at 1062.

b. Even if Respondent was not “officially” a trustee, you can sue them as a *de facto trustee*. If a person, by mistake or otherwise, assumes the character of a trustee and acts as such when the office does not belong to him, he becomes a trustee *de son tort* and may be called upon to account for assets received under the color of the trust. *England v. Winslow* (1925) 196 Cal. 260, 267. During the possession and management by such individuals, they are subject to the same rules and remedies as other trustees. *Id.* at 268.

c. **PRACTICE TIP**: Also consider adding a demand for TRUST INFORMATION from the Trustee; i.e. in addition to an accounting. Prob. Code §§16060-16061.

d. **SUGGESTED ACCOUNTING LANGUAGE FOR ORDER/PRAYER**: “That Respondent XXX be ordered to formally account within 60 days for all of her acts and transactions with regard to the XXX Family Trust and its assets, whether acting as a *de facto* Trustee, trustee *de son tort*, sole trustee, or as Co-Trustee.”

   (1) Usually, there will be a dispute over the proper start date for the accounting. Using this language, no specific start date need be ordered. Objections can always be filed to the account that is given that the start date used is the wrong one; i.e. the account should have started much earlier.
Almost always, the Respondent never starts the accounting as far back as you think it should go. Consider a Motion to Bifurcate the issue of when accounting should start.

4. REMOVAL OF TRUSTEE: In addition to the permanent removal of MELINDA as trustee which will not be decided until the trial, also include request for immediate removal with appointment of temporary trustee per Probate Code §17206.

a. §15642(e): “(e) If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court deems necessary.”

b. §17206: “The court in its discretion may make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.”

– NOTE: I do not name a particular neutral, professional trustee to serve if not named already in trust documents. Once you name someone, other side automatically assumes you are aligned with them and will object. I wait until the hearing to bring up names.

c. In the alternative: Ask that all Trust assets be frozen except for a small amount for routine Trust expenses excluding attorney and trustee fees. Be sure to include legal description of any real property so you can RECORD any interim order you may obtain.

d. STRATEGY: The Respondent is usually the one with the litigation war chest if she is still acting as Trustee with access to Trust funds to “defend” the Trust. Respondent may take “scorched-earth” litigation approach. Need to take away the
war chest and force Respondent to use her own monies for her defense. And, although Respondent may be surcharged for the defense costs later when she loses, she may be judgment-proof.

e. SIDENOTE: Successor Trustee is entitled to all attorney-client privileged communications of predecessor trustee. The attorney-client privilege follows of office of trustee. Moeller v. Superior Court of Los Angeles County (1997) 16 Cal. 4th 1124, 1139.

5. INTENTIONAL INTERFERENCE WITH RIGHT TO INHERIT: Only a few years ago was this tort established here in California via the decision in Beckwith v. Dahl (2012) 205 Cal.App.4th 1039.

a. Holding: A court should recognize the tort of IIEI if it is necessary to afford an injured plaintiff a remedy because no adequate probate remedy exists. E.g. where Decedent promised to leave Plaintiff something in a Will but Defendant intentionally interfered by stopping the Decedent from making the will.

6. CONTRACT TO MAKE A WILL: Did Settlor promise your client that she would leave them money and did your client detrimentally rely on that promise?

a. BEWARE of very tough standards to prove an ORAL CONTRACT to make a will.

b. Probate Code §21700(a). “A contract to make a will or devise or other instrument, or not to revoke a will or devise or other instrument, or to die intestate, if made after the effective date of this statute, can be established only by one of the following:

(1) Provisions of a will or other instrument stating the material provisions of the contract.

4 January 1, 2001
(2) An expressed reference in a will or other instrument to a contract and extrinsic evidence proving the terms of the contract.

(3) A writing signed by the decedent evidencing the contract.

(4) **Clear and convincing evidence** of an agreement between the decedent and the claimant or a promise by the decedent to the claimant that is enforceable in equity.

(5) **Clear and convincing evidence** of an agreement between the decedent and another person for the benefit of the claimant or a promise by the decedent to another person for the benefit of the claimant that is enforceable in equity.”

(Emphasis added.)

II. **DISCOVERY AND INVESTIGATION**

A. **WORKING WITH LAW ENFORCEMENT:** If there was law enforcement involvement prior to death, contact assigned detective and introduce yourself. See if investigation is ongoing. Any plans to refer to District Attorney for prosecution?

1. Consider stalling civil litigation while criminal investigation and proceedings play out. Part of plea deal may be Disclaimer by Respondent of any interest in Trust and/or civil restitution. Civil litigation may not end up being necessary.

2. However, with budget cutbacks, less resources for elder financial abuse actions to be pursued.

3. Also worth having your client call local law enforcement to see if you can get them interested in investigating even after the death.

4. Also try having investigation started with Respondent’s licensing authority, if any. I.e. in Hypo, Melinda is a real estate agent. File a complaint with DRE. Or, e.g. I had a case once where FINRA took criminal action against Respondent, even having him arrested and jailed.
B. WORKING WITH OTHER PARTIES: Assume from our Hypo that MARK hires his own attorney and joins in the Trust Contest. How can you work with MARK and his attorney, but still keep the communications privileged? Enter into a COMMON INTEREST AGREEMENT, sample at APPENDIX 4.

1. NON-WAIVER DOCTRINE: Unlike federal courts, California courts do not recognize a joint defense or common interest privilege per se. Instead, the common interest doctrine is more appropriately characterized as a non-waiver doctrine, analyzed under standard waiver principles applicable to the attorney-client privilege and work product doctrine. Raytheon Co. v. Superior Court (1989) 208 Cal.App.4th 683, 689.

2. ATTORNEY-CLIENT PRIVILEGE: Evidence Code Section 912 provides, in pertinent part: “A disclosure in confidence of a communication that is protected by a privilege provided by Section 954 (lawyer-client privilege) . . . when disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer . . . was consulted, is not a waiver of the privilege.” Oxy Resources California, LLC v. Superior Court (2004) 115 Cal.App.4th 874, 890, quoting Evid. Code §912(d).

   a. Thus, the privilege extends to communications which are intended to be confidential, if they are made to attorneys, to family members, business associates, or agents of the party or his attorneys on matters of joint concern, when disclosure of the communication is reasonably necessary to further the interest of the litigant. Id.

   b. While involvement of an unnecessary third person in attorney-client communications destroys confidentiality, involvement of third persons to whom disclosure is reasonably necessary to further the purpose of the legal consultation preserves the confidentiality of the communication. Id.

   c. See also Evidence Code Section 954, which defines a “confidential communication” between a client and lawyer, and similarly acknowledges that information transmitted between a client and lawyer retains its privileged character if transmitted in confidence “to no third persons other than those
who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted”.

3. **WORK PRODUCT PRIVILEGE:** Although there is no statutory provision governing waiver of work product protection, California courts have nevertheless recognized that the waiver doctrine is also applicable to the work product rule. *Oxy Resources California, LLC* at 891. The work product protection is not waived except by a disclosure wholly inconsistent with the purpose of the privilege, which is to safeguard the attorney’s work product and trial preparation. *Id.*

4. **NO GUARANTEE:** A Joint Defense Agreement simply provides evidence of the reasonable expectation of confidentiality required to invoke the common interest doctrine and avoid waiver by disclosure; i.e., *it strengthens the case against waiver*, but is neither a requirement nor a guarantee. *Oxy Resources California, LLC* at 892.

C. **NO DISCOVERY UNTIL AFTER OBJECTIONS ARE FILED:**

This is the Forthmann Rule. Forthmann v. Boyer (2002) 97 Cal.App.4th 977, 985. There is no right to conduct formal discovery before written objections are filed.

D. **DISCOVERY OF PROPERTY OF DECEDED – PROBATE CODE §8870**

APPLIES TO ESTATES. Court may authorize issuance of Citation to a person to “... answer interrogatories, or to appear before the court and be examined under oath, or both, concerning any of the following allegations:

(1) The person has wrongfully taken, concealed, or disposed of property in the estate of the decedent.

(2) The person has knowledge or possession of any of the following:
(A) A deed, conveyance, bond, contract, or other writing that contains evidence of or tends to disclose the right, title, interest, or claim of the decedent to property.
(B) A claim of the decedent.
(C) A lost will of the decedent.”

E. SUBPOENAS

1. FOCUS INITIAL EFFORTS HERE: These are my favorite discovery tool. They are cheap and easy, with the least amount of complications. If you have a limited litigation budget, focus your efforts here.

2. WHO TO SUBPOENA: Samples of each at APPENDIX 8. Generally, three, key categories:

a. ESTATE PLANNING ATTORNEYS:

   (1) No Attorney-Client privilege with respect to communications relevant to an issue:

   (i) Between parties who claim through a deceased client. Ev. Code §957.

   (ii) Concerning intention or competence of a client executing an attested document of which lawyer is an attesting witness or concerning the execution or attestation of such document. Ev. Code §959.

   (iii) Concerning the intention of a deceased client with respect to a deed of conveyance, will, or other writing executed by the client purporting to affect an interest in property. Ev. Code §960.

   (iv) Concerning the validity of a deed of conveyance, will, or other writing executed by a deceased client purporting to affect an interest in property. Ev. Code §961.

See APPENDIX 5 for sample production demand letter to send if drafting attorney attempts to raise attorney-client privilege to block production.

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b. **MEDICAL RECORDS:**

(1) Hospitals, skilled nursing facilities, family doctor, specialists, HMOs.

(2) **PRACTICE TIP:** Include Settlor’s date of birth if you have it to help deponent find records faster.

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c. **FINANCIAL RECORDS:**

(1) Banks, credit unions, investment advisors, brokers, insurance agents, annuities, insurance companies, pensions

(2) Be sure to ask for ALL documents including statements, beneficiary designations, signature cards, deposits, cancelled checks, et al.

(3) **PRACTICE TIP:** Include Settlor’s SSN if you have it to help deponent find records faster.

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d. **OTHER:**

(1) APS if there was an investigation

(2) Any licensing agencies

(3) Friends, family members for personal correspondence

(4) Church, clubs, associations

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3. **WHO TO SUBPOENA FROM OUR HYPO:**

a. John Ellington’s EP file

b. Alice Sutton’s EP file

c. Charles Schwab

d. Wells Fargo Bank

e. CPA Joe Peters

f. [Any other financial institutions located through tracing documents obtained in (c), (d) and (e)]

g. DRE for Melinda’s license record

h. St. Joseph’s Hospital

i. Edna’s treating physicians

j. [All other medical providers mentioned in documents obtained in (h) and (i)]

k. CALPERS if it had a death benefit and beneficiary may have been changed
4. **HOW TO SUBPOENA:**

a. Attached at **APPENDIX 6** is a step-by-step guide for Business Records Subpoenas served with a NOTICE TO CONSUMER.

   (1) Arguably, no Notice of Consumer required when you are seeking the records of a deceased person. The Right of Privacy dies with the person. However, if seeking records for accounts which relate to any live person – e.g. a surviving joint tenant, pay-on-death beneficiary designations – better to just include Notice to Consumer directed to them.

b. Include a blank Declaration of Custodian of Records for document deponent to complete and return to you. This declaration is needed to authenticate the records at trial.

   (1) A sample packet I include with all subpoenas, including this blank Declaration, is provided at **APPENDIX 7**.

5. **COMMON OBJECTION TO SUBPOENAS – RIGHT TO FINANCIAL PRIVACY:** Very often, you need to subpoena the Respondent’s own bank account records to trace stolen Trust monies. Respondent will likely object based upon her Right to Financial Privacy.

   a. California accords privacy the constitutional status of an “inalienable right,” on par with defending life and possessing property. *Vinson v. Superior Ct.* (1987) 43 Cal.3d 833, 841. The right of privacy extends to one’s confidential financial affairs as well as to the details of one’s personal life. *Valley Bank of Nevada v. Superior Ct.* (1975) 15 Cal.3d 652, 656. The right to privacy extends to “confidential customer information whatever form it takes, whether that form be tax returns, checks, statements or other account information.” *Fortunato v. Superior Ct.* (2003) 114 Cal.App.4th 475, 480. Thus, California courts have long held that bank customers have a reasonable expectation that banks will maintain the confidentiality of their statements and records of payments.

b. Courts therefore “indulge in a careful balancing of the right of civil litigants to discover relevant facts, on the one hand, with the right of bank customers to maintain reasonable privacy regarding their financial affairs, on the other.” *Valley Bank* at 657. When compelled disclosure intrudes on constitutionally protected areas, it cannot be justified solely on the ground that it may lead to relevant information; rather, the compelled disclosure must be directly relevant. *Board of Trustees of Leland Stanford Junior University v. Superior Ct.* (1981) 119 Cal.App.3d 516, 525. And even when discovery of private information is found directly relevant to the issues of ongoing litigation, it will not be automatically allowed; there must then be a “careful balancing” or the “compelling public need” for discovery against the “fundamental right of privacy.” *Id.*

c. **Potential Solution: An Attorney and Expert Eyes Only Protective Order.** Sample provided at *APPENDIX 13.* Another option is a stipulation limiting the extent of the information produced - e.g., just the date and amount of transactions, or details regarding transactions only with certain specifically identified entities, etc.

### F. WRITTEN DISCOVERY

1. **FOUR TYPES:**
   
   a. Form Interrogatories
   
   b. Special Interrogatories
   
   c. Requests for Admissions
   
   d. Demands for Production of Documents

   I find the last one the most helpful. Always focus on getting whatever documents the other side is going to use to defend their case.

2. **MEET & CONFER REQUIREMENTS:** In particular, written discovery battles can be the most expensive, time-consuming part of the case. Meet and confer is always required before a Motion to Compel can be filed. Some litigators take this as an invitation not to
cooperate with their initial responses since they know they will have a second crack at it during meet and confer process by providing supplemental responses.

a. In discovery disputes, it pays to **wear the white hat**: be reasonable (i.e., be willing to offer some information if you represent the responding party, and be willing to accept some limitations on responses if you are the propounding party), and offer accommodations that the court will be likely to accept in the event of a Motion to Compel or Motion for Protective Order.

b. The “meet and confer” process, while somewhat informal, is actually governed by fairly strict rules.

The parties to a discovery dispute “must present to each other the merits of their respective positions with the same candor, specificity, and support during the informal negotiations as during the briefing of discovery motions. Only after all the cards have been laid on the table, and a party has meaningfully assessed the relative strengths and weaknesses of its position in light of all available information, can there be a ‘sincere effort’ to resolve the matter.” *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1435.

Thus, a reasonable and good faith attempt at informal resolution “entails something more than bickering with [opposing] counsel . . . Rather, the law requires that counsel attempt to talk the matter over, compare their views, consult, and deliberate. *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1294.

c. If meet and confer efforts with opposing counsel do not resolve the matter, contact the court and ask for an informal discovery hearing. Since courts do not want to see their calendars clogged with discovery motions, they will often agree to discuss a discovery dispute with the parties and attempt to help them reach a solution. These informal discovery hearings are already required by law in specific types of cases, and it may become the rule as to all matters in the near future.
c. Consider a stipulated **Protective Order** as a solution, especially with Right to Privacy objections. Sample Stipulation and Order Re: Protective Order attached at **APPENDIX 13**.

3. **FORM INTERROGATORIES**: Be sure to draft a workable definition for “INCIDENT”. Sample Form Interrogatories at **APPENDIX 9**.

   a. **RESPONDING TO FORM INTERROGATORIES**: Use following objection if Propounding Party’s fails to specifically define “INCIDENT” or their definition is confusing:

   Responding Party objects to the Form Interrogatories definition of the term “INCIDENT” on the grounds that it renders each interrogatory vague, ambiguous, uncertain, over broad, burdensome and oppressive in that this Responding Party does not know and cannot discern to what the term “INCIDENT” is referring. In the spirit of cooperation, Responding Party will attempt to respond to these Form Interrogatories as though the term “INCIDENT” refers to ______________________________, and which is subject of the herein litigation.

4. **SPECIAL INTERROGATORIES**: Sample Special Interrogatories for a Trust Contest at **APPENDIX 10**.

   a. Caution: Definitions and Instructions are no longer allowed in a preface for a set of Interrogatories. See **C.C.P. § 2030.060**.

   b. If propound over 35 requests, attach a Declaration for additional discovery.

   c. If Respondent filed fact-specific Objections as opposed to a civil-style answer, then also propound contention interrogatories.

   d. **RESPONDING TO SPECIAL INTERROGATORIES**: Some objections you can use:
(1) Responding Party further objects to this interrogatory to the extent it seeks information equally available to the Propounding Party – i.e. information under the control of third parties and obtainable via subpoena.

(2) Responding Party further objects to the extent that much, if not all, of this witness identification information is equally available, if not exclusively available, to the propounding party himself.

(3) [Describe type of documents] are in the sole control of [describe third parties] and, thus, are equally available for identification by the Propounding Party by way of subpoena. The Responding Party is in the process of subpoenaing EDNA’s health care providers as part of the investigation of this matter. If the Propounding Party desires copies of documents being subpoenaed by and produced to the Responding Party, then Propounding Party can follow the applicable Discovery Code procedures for obtaining them.

(4) Responding Party further objects to the extent this interrogatory seeks information and personal observations within the purview of third persons other than him/herself. Responding Party will respond to this interrogatory based upon his/her own memories and personal observations; it is up to the Propounding Party’s own investigation and discovery in this matter to determine what knowledge third parties may have, including but not limited to EDNA’s other family members.

(5) The Responding Party objects to this interrogatory because it is overbroad and unduly burdensome. [Add supporting facts as to why it is]

(6) The Responding Party objects to this interrogatory to the extent it calls for a burdensome, narrative answer by demanding “each and every fact.” Without waiving the foregoing, the Responding Party will provide a general response outlining the basic facts in support of the referenced allegation.
Further, Responding Party objects because this interrogatory is vague and confusing in that it attempts to characterize a fact as a contention, and then requests facts in support of a fact. In a good faith attempt to provide full disclosure in response to this interrogatory, Responding Party will instead provide whatever additional facts and information he/she has on the topic broached by this interrogatory.

This Interrogatory appears to be calculated to harass Responding Party with costly, overbroad, burdensome, oppressive, and unnecessary discovery, especially when viewed in context with all of the voluminous written discovery propounded upon Responding Party by the Propounding Party.

[Reason why; like solely a legal issue for the judge to determine.] Accordingly, the discovery sought is improper because it is not likely to lead to the discovery of admissible evidence. See Deaile v. General Telephone Co. of California (1974) 40 Cal. App. 3d 841, 851. Further, these documents will provide no benefit to Propounding Party on this solely legal issue; accordingly, they are irrelevant. See Shaffer v. Superior Court (1995) 33 Cal. App. 4th 993, 1000-1003.

5. REQUESTS FOR ADMISSIONS: Sample Requests for Admission for a Trust Contest at APPENDIX 11.

a. It is important to remember that Requests for Admissions are different than other forms of written discovery – their purpose is to eliminate issues for trial, not to uncover facts. Some authorities to oppose the improper use of RFAs for fact-gathering are:

(1) The fundamental purpose of a request for admissions is to limit the triable issues and spare parties the burden and expense of litigating undisputed issues. Brigante v. Huang (1993) 20 Cal.App.4th 1569, 1576-1581 (disapproved on other grounds in Wilcox v. Birtwhistle (1999) 21 Cal.4th 973, 983 fn. 12); see also 161-96
California Forms of Pleading & Practice - Annotated §196.11 (Matthew Bender & Co. 2009) - Nature and Purpose of Requests for Admissions.

(2) “The plain language of the admission sections makes it apparent that they were enacted to eliminate the necessity of putting on formal proof of essentially uncontroverted facts.” Hillman v. Stults (1968) 263 Cal.App.2d 848, 885.


(4) If a person desires to sound out an adversary’s knowledge relative to the existence of facts, he should resort to other discovery methods and not use requests for admissions. International Harvester Co. v. Superior Ct. (1969) 273 Cal.App.2d 652, 655; see also California v. S.S. Jules Freibourg (D. Cal. 1955) 19 F.R.D. 432, 436 (C.C.P. §2033 is the counterpart to Rule 36, Federal Rules of Civil Procedure, 28 U.S.C.A; federal decisions uniformly hold that Rule 36 cannot be employed as a substitute for discovery procedures to uncover evidence).

b. If you serve Requests for Admission, always serve concurrently with Form Interrogatory 17.1. (If you have already propounded Form Rogs previously, then send with Form Rog form with only 17.1 checked.) Form Interrogatory 17.1 requires the responding party to provide evidentiary support for any response other than an unqualified admission.

c. If propound over 35 requests, attach a Declaration for additional discovery.

6. DOCUMENT DEMANDS: Sample Requests for Production of Documents for a Trust Contest at APPENDIX 12. Stay focused on getting all of Respondent’s pertinent documents and identity of their witnesses.
a. Particular documents to ask for besides those supporting Respondent’s claims:

(1) Financial records
(2) Personal notes, letters
(3) Correspondence
(4) Tape-recorded conversations
(5) Text messages and social media postings
(6) All docs identified in interrogatory responses

b. Remember, for document requests, the categories of documents must be reasonably particularized from the standpoint of the party on whom the demand is made. *Calcor Space Facility, Inc. v. Superior Ct. (Thiem Industries, Inc.)* (1997) 53 Cal.App.4th 216, 222. I.e. no contention document demands. Responding Party cannot be required to search its files to see what it can find to fit Propounding Party’s definitions, instructions and categories. Instead, description should bear a relationship to the manner in which the Responding Party actually maintains its records.

c. Also, requests for production should not be used to determine whether documents exist – the proper vehicles for obtaining that information are special interrogatories asking the responding party to identify documents in their possession, custody, and control relating to the matter at issue, then serving a request for production asking them to produce all documents so identified.

d. No limit on how many document demands you can propound. No Declaration for Additional Discovery needed.

e. RESPONDING TO DOCUMENT DEMANDS:

(1) Possible Responses:

   (a) The responding party has made a diligent search and a reasonable inquiry in an effort to comply with this demand and is unable to comply with this demand as no documents responsive to this request ever existed.
(b) The responding party has made a diligent search and a reasonable inquiry in an effort to comply with this demand and is unable to comply with this demand because documents responsive to this request are no longer, or have never been, within the possession, custody or control of the Responding Party.

(c) The responding party has made a diligent search and a reasonable inquiry in an effort to comply with this demand and is unable to comply with this demand because the documents have been destroyed / lost / misplaced / stolen.

(d) The responding party will produce all non-privileged documents responsive to this request to the extent that they are within this responding party’s possession, custody and control.

(e) The responding party has made a diligent search and a reasonable inquiry in an effort to comply with this demand and is unable to comply with this demand at this time because it has been unable to locate the documents. Responding Party intends to continue searching for these documents and, if, and when, these documents are located, they will be promptly produced to the Propounding Party through a Supplemental Document Production.

(f) The responding party has made a diligent search and a reasonable inquiry in an effort to comply with this demand and is able to only partially comply with this demand at this time because it has been unable to locate all of the documents. Responding Party intends to continue searching for all of these documents and, if, and when, these documents are located, they will be promptly produced to the Propounding Party through a Supplemental Document Production.
(2) Possible Objections:

(a) In addition, Responding Party objects to this demand on the grounds that it seeks documents which are in the exclusive control of the Propounding Party.

(b) Responding Party further objects to this document request on the ground that it seeks information which is neither relevant to the pending litigation nor reasonably calculated to lead to the discovery of admissible evidence.

(c) Responding Party further objects to this request on the basis that the requested category of documents seeks privileged and confidential information of Responding Party’s which is protected by the Constitution of the State of California, federal and/or state statutes and applicable case law.

(d) Taxpayers are privileged to withhold disclosure of copies of both their federal and state tax returns and the information contained therein. See Cal. Rev.& Tax.C. §19542 and Webb v. Standard Oil Co. (1957) 49 Cal.2d 509, 513-14.

(e) In addition, Responding Party objects to this demand on the grounds that it is drafted so broadly that its scope encompasses numerous other demands upon Responding Party. To the extent that Respondent possesses documents that comply with a more specific demand for documents, Respondent will produce those documents in relation to the more specific demand.

(f) Responding Party objects to this demand on the grounds that it is vague, ambiguous, uncertain, over broad, burdensome and oppressive and that it is not sufficiently limited in time or scope.
(g) Responding Party further objects to this demand because it neither describes any individual item that is being sought nor reasonably particularizes a category of items being sought as required by Code of Civil Procedure section 2031.030(c)(1). As held by the court in Calcor Space Facility, Inc. v. Sup.Ct. (1997) 53 Cal.App.4th 216, 222, it is not reasonable to describe documents by categories which bear no relationship to the manner in which the documents are kept and require the producing party to determine which of its extensive records fit a demand that asks for everything in its possession relating to a specific topic.

7. ELECTRONIC DISCOVERY: What if Edna used email?

a. If you believe that there will be information that you need that is maintained as Electronically Stored Information (ESI), it is best to contact opposing counsel and establish the means of production prior to the Case Management Conference. The propounding party may opt to demand production in a specified form in its requests; however, if the responding party has to convert its ESI to that format, the propounding party will have to pay the reasonable costs of doing so. C.C.P. §§2031.030(a)(2); 2031.280(c)-(e).

8. SUPPLEMENTAL DISCOVERY: Pursuant to statute, you are entitled to request supplemental responses to any previously-answered Interrogatories or Requests for Production. These supplemental requests may be propounded twice before the initial setting of the trial date, and once after the initial setting of the trial date. C.C.P. §§2031.250 (Request for Production), 2030.070 (Interrogatories).

Remember, documents and things not produced in response to discovery requests may be excluded from trial (see e.g., Young v. Rosenthal (1989) 212 Cal.App.3d 96, 119; Deeter v. Angus (1986) 179 Cal.App.3d 241, 254), as can testimony from witnesses not identified in response to valid discovery requests (see e.g., Crumpton v. Dickstein (1978) 82 Cal.App.3d 166, 172).
G. PRIVATE INVESTIGATORS

1. WHY USE ONE?
   
a. Preserves the credibility of the witnesses. Avoid letting your client interview potential witnesses! Respondent will try to impeach them at trial and argue that your client influenced them.

b. Avoid interviewing witnesses yourself! It could put you in the awkward position of having to testify at trial as to what the witness said to you in the event they change their story at trial.

c. You will get detailed summaries of what each witness would testify to at trial. You can use those summaries to decide which witness depositions to take.

d. Private Investigator rates are MUCH LOWER than attorney rates. Your client will save money if an investigator interviews witnesses instead of you.

2. APPLICATION OF WORK PRODUCT PRIVILEGE: The work product privilege extends not only to the attorney’s work product, but also to the efforts of those who work with him to prepare the case. See e.g., City of Los Angeles v. Superior Court (1985) 170 Cal.App.3d 744, 754. However, the work product privilege concerning an investigator’s report ceases the moment it is determined to use him as a witness, just as it does with the report of an expert. Mize v. Atcheson, T. & S.F. Ry. Co. (1975) 46 Cal.App.3d 436, 449

3. WHO TO INTERVIEW:
   
a. Other Relatives
b. Neighbors
c. Friends
d. Bank tellers
e. Accountant
f. Investments advisors
g. Treating physicians/ medical providers
h. Caregivers
H. CONSULTANTS/ EXPERTS

1. **TWO KEY TYPES USUALLY NEEDED:**
   
a. Geriatric psychiatrist or psychologist for lack of capacity and susceptibility to undue influence

b. Forensic accountant for any §850 claims to trace stolen monies to Respondent

2. **WHY DO YOU NEED EXPERTS?**
   
a. Boiled down to its very essence, a trial is a series of witnesses telling their story and introducing documents into evidence. Documents are going to do you no good at trial if you do not have a witness to talk about them.

b. FINANCIAL DOCUMENTS: Rarely is your client a CPA or bookkeeper themselves with the ability to analyze all the voluminous financial documents and testify regarding taking of monies by the Respondent. This testimony is more convincingly given by an expert.

c. MEDICAL RECORDS: Rarely is your client a medical professional with the ability to analyze voluminous medical records. This testimony is more convincingly given by an expert.

3. Hire as Consultant first; designate as an Expert only if conclusions are in your favor
   
a. Be sure retainer agreement is between you and the consultant directly so your work product privilege applies to consultant’s work. *County of Los Angeles v. Superior Court* (1990) 222 Cal.App.3d 647, 654.

b. HOWEVER, keep in mind, once you designate your consultant as your expert, her entire files are discoverable by opposing counsel. *Id.*

   (1) Be careful what you put into writing with your consultant (including emails) that will make its way
into her file. Do not include any of your strategy, impressions, conclusions, case weaknesses! Whenever you write your consultant, think about whether you would ever want your opposing counsel to see what you have written.

4. Hire your Consultants early:

a. Your Consultants will need to go through all the financial records and medical records to form their own expert opinions. Why duplicate their work by combing through the records yourself? Your forensic CPA consultant probably also charges less per hour than you. Why not have him analyze all the records for cheaper?

b. You can use what your Consultants find as ammunition to get Respondent suspended as Trustee. And will help settle the case at mediation.

c. The most well-respected geriatric psychiatrists get booked up fast. Reserve your favorite expert before the other side gets to them first! Trust contests usually turn into a Battle of the Experts.

I. DEPOSITIONS

1. **7-HOUR LIMIT**: Now have a 7-hour time limit just like federal court! Many practitioners are not aware of this change.

   a. Motion now required to go over 7 hours if other side will not stipulate. *C.C.P. §2025.290(a)*.

   b. **STRATEGY**: If you think you are going need more than 7 hours to depose the Respondent, then do not object to opposing counsel taking more than 7 hours with your client. He cannot reasonably turn around and object to you taking more than 7 hours too.

2. **NOTICE DEPOS AFTER YOU HAVE ALL DOCUMENTS YOU NEED**: Some litigators like to play “tough” and issue deposition notices early in the case. Resist the urge. GET ALL THE DOCUMENTS YOU NEED FIRST. You can only take the
witnesses deposition once. C.C.P. §2025.610(a),(b). If important documents or facts come up later and you have already deposed the witness, you have lost your chance to ask the witness about them.

3. **EXPERTS CAN HELP YOU PREPARE QUESTIONS:** If you have hired your experts early, then can also help you with deposition preparation by giving you questions to ask the witness.

4. **NO GRANDSTANDING:** The goal of a deposition should be to get the witness to talk. Be friendly and nice to get witness talking, even if the opposing party herself. The more a witness talks, the more of a chance the witness will say something you can impeach her with at trial.
   
a. Save the “touchy” questions for the end after you have already gotten the witness relaxed and talking.

   b. Save the impeachment – i.e. pointing out inconsistences – as a surprise for trial. Otherwise, the witness and her attorney will know to figure out how to explain away the inconsistency at trial. Save the “fireworks” for trial; do not waste them at a deposition.

5. **CONSIDER VIDEOTAPING:** Particularly for opposing party or anyone elderly/sick.

   a. Makes impeachment at trial more persuasive as demeanor of witness also shown.

   b. If witness becomes unavailable, much easier way to present the deposition testimony (than an attorney sitting in witness box just reading the deposition transcript).

   c. Cuts down on opposing counsel shenanigans and client coaching because it would all be caught on videotape. Good tactic if your opposing counsel is particularly difficult.

   d. Depose your own client if they are elderly and there is a chance that may not survive until your trial date.

///
6. BEING PREPARED YOURSELF FOR THE DEPOSITION:

a. I keep a folder with all of my key deposition authorities that I take to every deposition. That way, I have what I may need handy if a dispute arises. I include in folder:

(1) Current Practice Guide section on Deposition Conduct including the list of the objections that can and cannot be made at a deposition.

(2) Copy of the case *Rifkind v. Superior Court (Good)* (1994) 22 Cal. App. 4th 1255 which holds that contention questions cannot be asked at a deposition of a party represented by counsel; must be asked via a written interrogatory.

“If the deposing party wants to know facts, it can ask for facts; if it wants to know what the adverse party is contending, or how it rationalizes the facts as supporting a contention, it may ask that question in an interrogatory. The party answering the interrogatory may then, with aid of counsel, apply the legal reasoning involved in marshaling the facts relied upon for each of its contentions.” *Id.* at 1262.

b. If you think a touchy issue is going to come up, pre-brief it so you will be ready with needed meet-and-confer authority.

c. If taking the deposition:

(1) Prepare an outline of topics to cover. Note when a topic has an EXHIBIT to introduce.

(2) Clip multiple copies of your deposition exhibits together. Top one can be your working copy. I write my questions right on the working copy itself.

7. PREPARING YOUR CLIENT TO BE DEPOSED:

a. Provide them with a DVD on deposition prep. I like Magic Lamp Productions’ “Deposition Preparation” by the Members of St. Louis Bar Association which you can purchase from
b. If you are concerned about their presentation, go through some sample questions that you think might be asked of them. Videotape and play back. Set up your client’s own smartphone on a tripod so they will have their own video to review.

8. OTHER TIPS

a. At beginning, always ask deponent if there is any reason they cannot give their best testimony today.

b. Ask Court Reporter on record to mark each place in deposition where deponent refuses to answer a question based upon their attorney’s instructions. Makes preparation of Motion to Compel later much easier!

c. Speaking objections don’t help anyone. Simply state the objection and, if needed, instruct your client not to answer. If you are taking the deposition, do not let opposing counsel’s objections distract you. They really do not mean much unless counsel instructs his client not to answer. However, opposing counsel may have a point and you may want to rephrase your question to get a better record.

d. Breaks may only be taken after witness has finished her answer. If counsel leaves room with his client with a question pending, make sure you state on record that they left while question was pending. I.e. make sure the coaching is on the record. Do the same if opposing counsel is whispering answers to his client. State: “For the record, counsel is whispering something to his client right now.”

e. Court reporter can only go off the record if ALL attorneys agree UNLESS one attorney states on record that he will be seeking a protective order. Then, court reporter can go off the record over the objection of one of the attorneys. Code of Civ. Proc. §2025.470.
III. PRE-TRIAL DEADLINES AND PREPARATION

A. TRIAL DATE PRIORITY: If your client is over 70 years old or suffering from a condition that raises doubt as to their survival within 6 months, consider bringing a Motion for Trial Preference under Code of Civ. Proc. §36. Court must make following findings:

1. The party has a substantial interest in the action as a whole.

2. The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation.

If granted, trial shall be set not more than 120 days from the date motion granted.

B. CALCULATING AND CALENDARING ALL DEADLINES

1. Pretrial Deadline Calculation Sheet, with all Los Angeles Superior Court Local Rule deadlines, provided at APPENDIX 14.

   a. As probate trials usually do not have Final Status Conferences like civil trials, all deadlines are calculated relative to the Trial Date itself (unless, of course, judge decides to set a FSC.)

2. CHECK FOR LOCAL RULE AND LOCAL, LOCAL RULES

   a. Re-review the Court’s Local Rules for any particular pre-trial rules. They may have changed since you last prepared for trial.

   b. Contact department for any courtroom pre-trial rules: “Local, Local Rules.”

C. BIFURCATION OF TRIAL

1. E.g. in an accounting trial, you may want to try first what the account start date should be. Respondent could be ordered to account further. Avoids have two trials over the accounting.

2. Trust Contests are like onions: You have to peel them back, one by one, from the outside in. Consider bifurcating the trial by each
challenged amendment. Each amendment may have its own unique issues that may not need to be tried if Contestant cannot set aside the more recent amendment.

a. E.g. Amendment #1 has no Certificate of Independent Review and leaves $100,000 to a potential caregiver (i.e. someone for whom there is a question of fact whether they were a caregiver). But Amendment #2 had the needed Certificate for a gift of $200,000 to the potential caregiver. The Respondent should consider seeking to bifurcate the Contest Trial by amended, trying the challenge to Amendment #2 first. If the Contestant cannot set aside Amendment #2, there is no need to get to the question of fact of whether the Respondent was a caregiver as defined by statute.

D. EXPERT WITNESSES: Very deadline specific:

1. **70 days before** initial trial date: DEMAND FOR EXCHANGE OF EXPERT WITNESS INFORMATION

2. **50 days before** trial: EXCHANGE OF EXPERT WITNESS INFORMATION

3. **15 days before** trial: EXPERT WITNESS DEPOSITION DEADLINE

E. ANTICIPATE DEFENSES

1. E.g. MELINDA is likely to argue at trial that CANDY and MARK did not do enough to help take care of EDNA as she aged and after her husband died. Thus, EDNA needed someone like MELINDA who lived locally who could move in with her and help. Only natural that EDNA would want to reward MELINDA by being sole heir of her Trust.

a. Counter these arguments with specific evidence of CANDY and MARK’s relationship with EDNA over the years. Consider including evidence from 2006 onward of:

   (1) Telephone records reflecting frequent calls to EDNA
   (2) Cards, letters, and emails with EDNA, especially ones in which EDNA expressed love, affection, gratitude for
their help

(3) Pictures of happy family times together

b. Counter these arguments further with evidence of ISOLATION:

(1) EDNA’s fellow church members testifying that EDNA stopped going to Bingo night after MELINDA moved in in November 2012

(2) Other friends that lost contact with EDNA after MELINDA moved in. VIOLET may be your star witness.

(3) Medical records failing to list next of kin or family contact information while MELINDA in charge of EDNA’s medical care

2. Read the Trust carefully! E.g. exculpatory clause application to any alleged misdeeds by Melinda while acting as Successor Trustee.

a. Exculpatory clauses cannot release violation of law, intentional wrongs, or gross negligence. See Civil Code §1668.

F. EXHIBIT & WITNESS LISTS

1. SAMPLE EXHIBIT LIST at APPENDIX 15.

a. TIP: Always leave 5-10 numbered but blank exhibits at end, with corresponding tabs in your Exhibit binders. This way, impeachment or other last-minute exhibits introduced during trial can be easily added.

b. TIP: You can include in description helpful pointers to help you locate exhibits during trial.

E.G. Letter from Melinda Brooks to Alice Sutton dated May 15, 2014 requesting certain changes to draft First Amendment to Trust.
2. Most courtrooms also require a Witness List with estimated time on direct for each witness.

G. TRIAL SUBPOENAS

1. Prepare and serve subpoenas for all of your trial witnesses, even if friendly, at least 10 days before trial, 15 if they will need to bring documents. However, there is no minimum service time before trial (subpoenas may even be served during trial); any service must only “allow the witness a reasonable time for preparation and travel”. C.C.P. §1986.1.

   a. If anything comes up with one of your witnesses, the Court cannot accommodate their scheduling requests unless they have been served with a subpoena.

2. If needed, you can also subpoena a witness to bring documents to trial as well.

3. For parties, serve a NOTICE TO APPEAR AT TRIAL to compel their attendance.

H. MOTIONS IN LIMINE


2. EXAMPLES:

   a. E.g. Suppose MELINDA recorded a conversation with EDNA where EDNA told her that she wanted to leave her everything. You are fairly certain the other side intends to introduce it at trial despite the fact they have no evidence that EDNA knew she was being recorded at the time.
(1) Do a Motion in Limine to exclude any taped conversations with EDNA.

b. E.g. Suppose MARK was convicted 20 years ago of passing a bad check for $50,000. You suspect opposing counsel may try to introduce to denigrate his character. Should you do a Motion in Limine?

(1) Probably not, since it is a court trial. You would just be telling the judge ahead of time such evidence does exist. The judge may never know about it if the other side does not, in fact, seek to introduce it. If it were a jury trial, then definitely bring the MIL.

I. TRIAL BRIEF: Probate trials are court trials, so be sure to submit a well-written Trial Brief. Even more important if you get sent out to trial to a civil courtroom where judge has little probate experience.

J. JOINT TRIAL STATEMENT: Per LASC Local Rule 4.15, a detailed Joint Trial Statement is to be submitted by the parties by no later than 10 calendar days before the trial date. The parties are required to meet and confer in good faith on the preparation of the JTS at least 30 days before trial. A copy of Local Rule 4.15 is attached at APPENDIX 16.

* * *
# TRUST CONTEST LITIGATION:

## TABLE OF APPENDIXES

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Hypothetical Case Facts</td>
<td>38</td>
</tr>
<tr>
<td>2</td>
<td>Sample Timeline</td>
<td>42</td>
</tr>
<tr>
<td>3</td>
<td>Trust Contest Pleading</td>
<td>45</td>
</tr>
<tr>
<td>4</td>
<td>Common Interest Agreement</td>
<td>59</td>
</tr>
<tr>
<td>5</td>
<td>Letter to Estate Planning Attorney</td>
<td>64</td>
</tr>
<tr>
<td></td>
<td>Re Waiver of Attorney-Client Privilege</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Memo Re: Records Only Subpoenas</td>
<td>67</td>
</tr>
<tr>
<td>7</td>
<td>Information for Deposition Subpoena and</td>
<td>73</td>
</tr>
<tr>
<td></td>
<td>Form Custodian of Records Declaration</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Sample Subpoenas: Estate Planning Attorney, Doctor, and Financial</td>
<td>78</td>
</tr>
<tr>
<td></td>
<td>Institution</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Sample Form Interrogatories</td>
<td>94</td>
</tr>
<tr>
<td>10</td>
<td>Sample Special Interrogatories</td>
<td>103</td>
</tr>
<tr>
<td>11</td>
<td>Sample Requests for Admission</td>
<td>114</td>
</tr>
<tr>
<td>12</td>
<td>Sample Request for Production of Documents</td>
<td>123</td>
</tr>
<tr>
<td>13</td>
<td>Stipulation &amp; Order for Protective Order, Financial Records of a</td>
<td>134</td>
</tr>
<tr>
<td></td>
<td>Third Party Being Sought</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Trial Deadlines Calculation Form</td>
<td>138</td>
</tr>
<tr>
<td>15</td>
<td>Form for Trial Exhibit List</td>
<td>144</td>
</tr>
<tr>
<td>16</td>
<td>LASC Local Rule 4.15, Trial on Contested Matters</td>
<td>148</td>
</tr>
</tbody>
</table>
APPENDIX 1
EDNA Griswold was a 86-year old woman who lived in Orange, California. She never had children and her husband passed away in 2005. Her closest living relatives were a niece CANDY Johnson who lives in Idaho and a nephew MARK Griswold who lives in New York. After her husband died, CANDY and MARK made a point of each calling EDNA once a week to check in on her and would trade turns flying out to visit her every year in December for the holidays.

EDNA was a private person who generally kept to herself, but would enjoy evening walks around her neighborhood and Friday night bingo at her church First Presbyterian Church. Her closest friend was her 76-year old neighbor VIOLET Gould with whom she would have lunch once a week.

EDNA and her husband had never done any estate planning, owning everything as joint tenants. In 2006, a friend at church told EDNA she really need to get a trust and recommended that she see an attorney named JOHN Ellington. EDNA followed her church friend’s advice and, on July 1, 2006, executed the EDNA GRISWOLD LIVING TRUST at Mr. Ellington’s office. In her Trust, EDNA left $10,000 to VIOLET and all of her remaining assets to CANDY and MARK equally. CANDY and MARK were nominated as Successor Co-Trustees. At the time she executed her Trust, EDNA owned her house in Orange free and clear, had $1.5 million invested in a Charles Schwab account, and kept a small checking account at Wells Fargo Bank that she used to pay bills. EDNA’s husband left her with a $2,000 a month pension with CALPERS so EDNA rarely had to transfer monies from her Charles Schwab account to pay bills.

Beginning sometime in early 2011, CANDY and MARK noticed that EDNA started to become a little forgetful during their weekly phone calls. She would forget the date or what she did that day. But she always remembered their names and who she was talking to.
In November 2011, EDNA got a knock on her door one afternoon. When she answered it, a well-dressed woman in her 40s was there who introduced herself as MELINDA Brooks. MELINDA said she was a real estate agent from Los Angeles who was looking to break into the Orange County real estate market. She wanted to know if EDNA had any plans to sell her house in the near future. EDNA told her no, but the two got to talking and realized that they had a common love of collectible Taco Bell Chihuahua stuffed dogs. EDNA invited MELINDA into her house to see her collection and MELINDA ended up staying for lunch. They became fast friends and MELINDA began to visit regularly. MELINDA would take EDNA out to dinner every Friday, so EDNA stopped going to her Friday bingo night at her church.

In September 2012, EDNA had a stroke and was hospitalized for a few days at St. Joseph’s Hospital. Afterwards, EDNA could no longer drive, had trouble walking, and had trouble writing due to weakness with the right side of her body. Since she was over visiting every Friday anyway, EDNA asked MELINDA to start helping her write her bills. After helping her write her bills for a few weeks, MELINDA offered to help EDNA with her other errands like the grocery store, the pharmacy, and doctors’ appointments. Eventually, in November 2012, MELINDA offered to move in with EDNA so she could be of more assistance. EDNA agreed.

After MELINDA moved in, EDNA never seemed to be home to answer the phone when CANDY and MARK called. They would leave messages, but their calls were rarely returned. EDNA stopped her evening walks around the neighborhood. EDNA also stopped having her weekly lunches with VIOLET. In early December 2012, EDNA called CANDY and MARK and told both of them that she was spending the Christmas holiday with friends so she would not be home for their usual December visit.

In May 2013, MELINDA sets up an appointment for EDNA with Los Angeles estate planning attorney ALICE Sutton. MELINDA brings EDNA to the appointment. EDNA tells ALICE that she wants to leave MELINDA her house, but the rest of her Trust can stay the same (i.e. $10,000 to VIOLET and remainder equally to CANDY and MARK). ALICE prepares the amendment and MELINDA brings EDNA back in to ALICE’s office where it is executed on May 20, 2013.

In December 2013, EDNA makes another excuse to CANDY and MARK why they cannot come visit for the holidays.
In March 2014, CANDY got a call from EDNA’s long-time accountant JOE Peters. JOE told CANDY he was worried about EDNA. In preparing her 2013 tax returns, he discovered a large amount of capital gains had to be reported from a large liquidation from EDNA’s Charles Schwab account. It was not like EDNA to ever liquidate anything from her Schwab account.

Also in March 2014, MELINDA sets up another appointment with ALICE for another Trust amendment. This time, EDNA tells ALICE that CANDY and MARK never call or visit anymore. MELINDA is the only one taking care of her after her stroke. She wants to leave all of her Trust estate to MELINDA and name her sole Successor Trustee. After ALICE prepares the Second Amendment, EDNA comes in with MELINDA on March 15, 2014 and executes it.

On July 23, 2014, EDNA has a massive stroke and dies a few days later at the hospital. In September 2014, CANDY, MARK, and VIOLET receive a Trust Notification in the mail from RANDY Snarl informing them that they were disinherited from EDNA’s Trust and MELINDA is now the Trustee. CANDY finds your name on the internet and decides to retain you to contest the Trust Amendments. CANDY tells you she is dipping into her retirement savings to fund the litigation, so needs to keep costs down.
APPENDIX 2
SAMPLE TIMELINE FROM HYPOTHETICAL

[Continue to add to this Timeline throughout discovery process, adding key facts discovered. E.g. key medical records entries relating to capacity; any large withdrawals from Charles Schwab account. Have a print-out of this with you at all important hearings, depositions, and trial. Provide to mediator with Mediation Brief.]

THE EDNA GRISWOLD LIVING TRUST DTD JULY 1, 2006

CANDY JOHNSON V. MELINDA BROOKS

<table>
<thead>
<tr>
<th>DATE</th>
<th>EVENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1928</td>
<td>EDNA’s Date of Birth</td>
</tr>
<tr>
<td>2005</td>
<td>Edna’s husband dies</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>July 1, 2006</th>
<th>INITIAL TRUST FORMATION.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>EP atty = JOHN Ellington</td>
</tr>
</tbody>
</table>

Beneficiaries are:
$10,000 to VIOLET (friend)
50% to niece CANDY
50% to nephew MARK

Successor Trustees:
CANDY and MARK as Co

Assets at this time:
$1.5 million at Charles Schwab
Orange house, free and clear
Small WFB checking account

Early 2011
Client CANDY starts to notice that EDNA becoming forgetful

November 2011
EDNA meets MELINDA, a real estate broker canvassing neighborhood for leads

September 2012
EDNA’s Stroke #1

MELINDA starts helping EDNA write her bills
November 2012  MELINDA moves in with EDNA
Likely becomes a “caregiver”/ §21380

**ISOLATION BEGINS**

December 2012  EDNA calls CANDY and MARK; no holiday visit this year

May 20, 2013  TRUST AMENDMENT #1 executed.
New out of town EP Attorney ALICE Sutton

Beneficiaries are:
$10,000 to VIOLET (friend)
Orange House to MELINDA
50% to niece CANDY
50% to nephew MARK

Successor Trustees:
CANDY and MARK as Co

December 2013  EDNA called CANDY and MARK: same as last year, no
holiday visit

March 2014  CPA JOE Peters calls CANDY: large capital gains to report
from large liquidation from Charles Schwab account. Very
unusual.

March 15, 2014  TRUST AMENDMENT #2 executed.
EP Attorney = ALICE

Beneficiaries are:
100% to MELINDA

Successor Trustee:
MELINDA alone

July 23, 2014  EDNA Date of Death, massive stroke

September 2014  Trust Notification served
APPENDIX 3
In the Matter of:

THE EDNA GRISWOLD LIVING TRUST DATED JULY 1, 2006.

CANDY JOHNSON,
Petitioner,

vs.

MELINDA BROOKS, an individual and as Trustee of the Edna Griswold Living Trust;

Respondent.

PETITIONER CANDY JOHNSON (hereinafter “Candy” or “Petitioner”) hereby petitions this Court for the determination of the invalidity of certain amendments to the Edna Griswold Living Trust, et al., and states as follows:
A. INTRODUCTION

1. **Summary of Petition.** Petitioner Candy Johnson and her brother Mark Griswold were the Trust’s two sole and equal remainder beneficiaries when it was originally established in 2006. Candy and Mark are Edna’s closest living relatives and, although they live out of state, they kept a close watch on Edna after her husband died in 2005. In 2011, while the then 83-year old Edna was starting to decline mentally, Respondent Melinda Brooks, a real estate broker canvassing the neighborhood for leads, met and befriended Edna. After Edna had her first stroke in September 2012 and became mentally incapacitated, Melinda started to insert herself into Edna’s financial affairs, eventually moving in with Edna in November 2012 and isolating Edna from her friends and family. In May 2013, Melinda took Edna to a new, out-of-town estate planning attorney and unduly influenced Edna to execute a Trust Amendment leaving her Edna’s home in Orange. Melinda continued to unduly influence Edna and, in March 2014, Melinda took Edna to the out-of-town estate planner again, this time to execute a second trust amendment leaving her all of Edna’s trust estate. On July 23, 2014, Edna died of a massive stroke. A couple of months later, Petitioner was served with a notice that she had been completely disinherited from the Trust and that Melinda is now the acting Successor Trustee. This Petition now follows.

2. **Principal Place of Administration.** Petitioner is informed and believes that Melinda Brooks is conducting the administration of the Trust from the Trust’s real property located in Orange, California, where Melinda now resides.

B. FACTS

3. **Trustor and Trustor’s Relatives.** The Trustor and original Trustee of this Trust is the recently-deceased 86-year old Edna Griswold (“Edna”). Edna had been widowed by her husband Fred Griswold in 2005. Edna had no children. Her closest living relatives were her niece, Petitioner Candy Johnson (“Candy”), and nephew Mark Griswold (“Mark”), both of whom live out of state. Edna passed away on July 23, 2014, rendering the Trust irrevocable.
4. **Current Successor Trustee.** Based on Edna’s last March 15, 2014 Second Trust Amendment, which is being challenged in this Petition, Respondent Melinda Brooks ("Melinda") is the currently-acting Successor Trustee of Edna’s Trust.

5. **Establishment of Trust.** On July 1, 2006, Edna established this Trust, known as the Edna Griswold Living Trust ("Trust"). The attorney who prepared the original Trust was John Ellington, a local Orange County estate planning attorney. Edna was already widowed when she established her Trust. Under the original trust terms, Edna’s long-time neighbor and close friend Violet Gould was to receive a specific bequest of $10,000, with the remainder being split equally between Candy and Mark. Candy and Mark were to serve as Successor Co-Trustees.

6. **Trust Assets.** Petitioner is informed and believes that the assets which funded the Trust in 2006 were Edna’s home in Orange, a $1.5 million Charles Schwab account, and a small Wells Fargo Bank account. Edna’s husband left her with a $2,000 a month pension so Edna rarely had to dip into her Charles Schwab account to pay her living expenses.

7. **The Challenged Amendments.** After Edna met Melinda and Melinda inserted herself into Edna’s financial affairs (as described in more detail below), Edna amended her Trust twice using an out-of-town, Los Angeles estate planning attorney Alice Sutton as follows:
   a. On May 20, 2013, Edna executed the First Amendment which left Edna’s house in Orange to Melinda, with the remainder being split equally between Candy and Mark. The $10,000 specific bequest to Violet Gould was eliminated. Candy and Mark were still to serve as Successor Co-Trustees.
   b. On March 15, 2014, just a few months before she died, Edna executed the Second Amendment which completely disinherited Candy and Mark, leaving the entirety of the Trust to Melinda only. Melinda was also named sole Successor Trustee.

8. **Edna’s Close Relationships PRIOR to Melinda’s Befriending of Edna.**

   After Edna’s husband died in 2005, Candy and Mark made a point of each calling Edna once a week to check in on her and they would take turns flying out to visit her every year in December.
for the holidays. Edna was a private person who generally kept to herself, but would enjoy evening walks around her neighborhood and Friday night bingo at her church First Presbyterian Church. Her closest friend was her 76-year old neighbor Violet Gould with whom she would have lunch once a week.

9. **Edna’s Mental Decline Begins in Early 2011.** Beginning sometime in early 2011, Candy and Mark Noticed that Edna had started to become a little forgetful during their weekly phone calls. She would forget the date or what she did that day. Edna’s mental competency got slowly and progressively worse from that time.

10. **Edna Meets Real Estate Agent Melinda While Melinda Is CANvassing Edna’s Neighborhood for Leads.** Petitioner is informed and believes that sometime in November 2011, Edna met Melinda, a Los Angeles real estate agent purportedly looking to break into the Orange County real estate market, while Melinda was knocking on doors looking for leads. Melinda found out that Edna loved to collect Taco Bell Chihuahua stuffed dogs and claimed she did too in order to befriend her. Melinda, who was in her 40s, was significantly younger than Edna. Melinda began to visit Edna regularly. Edna used to go to bingo at her church every Friday evening, but stopped going after she met Melinda as Melinda started taking her out to dinner every Friday evening instead.

11. **Edna’s First Stroke.** In September 2012, Edna had a stroke and was hospitalized for a few days at St. Joseph’s Hospital. Afterwards, Edna could no longer drive, had trouble walking, and had trouble writing due to weakness with the right side of her body.

12. **Melinda Moves In with Edna, Increasing Her Influence, Control, and ISolation of Edna.** Since she was over visiting every Friday anyway, Edna asked Melinda to start helping her write her bills. After helping her write her bills for a few weeks, Melinda offered to help Edna with her other errands like the grocery store, the pharmacy, and doctors’ appointments. Eventually, in November 2012, Melinda moved in with Edna. Thereafter, Edna never seemed to be home to answer the phone when Candy or Mark called. They would leave messages, but their calls were rarely returned. Petitioner understands that Edna also stopped her evening walks around the neighborhood and her usual weekly lunches with Violet Gould. In
early December 2012, Edna called Candy and Mark and told both of them that she was
spending the Christmas holiday with friends so she would not be home for their usual
December visit. Just five months later, as discussed above, Edna amended her Trust on May
20, 2013 to leave Melinda her home.

13. Melinda’s isolation of Edna continued throughout 2013, culminating again with
Edna making an excuse to Candy and Mark why they could not come out to see her over the
2013 holidays. Just three months later, on March 15, 2014, Edna amended her Trust again, this
time completely disinheritng Candy and Mark and leaving everything to Melinda.

14. **Call from CPA Re: Liquidation of Charles Schwab Account.** In March
2014, Candy got a call from Edna’s long-time accountant Joe Peters. Mr. Peters told Candy he
was worried about Edna. In preparing her 2013 tax returns, he discovered a large amount of
capital gains had to be reported from a large liquidation from Edna’s Charles Schwab account.
It was not like Edna to ever liquidate anything from her Schwab account. Petitioner is informed
and believes that Melinda caused Edna to liquidate her Charles Schwab account and converted
the proceeds for her own personal benefit.

15. **Edna’s Death.** On July 23, 2014, Edna had a massive stroke and died a few
days later at the hospital. In September 2014, Candy, Mark, and Violet receive a Trust
Notification in the mail from Melinda’s attorney Randy Snarl informing them that they were
disinherited from Edna’s Trust and Melinda is now the Successor Trustee.

C.

**NOTICE**

16. **Statutory Notice Provisions.** The relief being requested herein is
authorized under Probate Code Section 17200. Accordingly, pursuant to Probate Code Section
17203, Petitioner will give notice of this Petition to all the living beneficiaries of the Trust as
set forth in the Trust and all of its subsequent amendments, along with their attorneys of record,
if any, 30 days before the hearing; no notice to the Attorney General is needed in this case as
this Trust is not a charitable trust.

///
Name                      Relationship

[List here so easier for your staff to know who to notice on POS]

There are no other persons whose right, title, or interest would be affected by this petition other than those listed above.

17. **Special Notice.** No requests for special notice have been filed in this proceeding as this is an initial filing.

D. **DETERMINATION OF INVALIDITY OF TRUST AMENDMENTS**

18. Petitioner realleges the allegations of Paragraphs 1 through 17 above as though set forth in full herein.

19. **Estate Planning Documents Being Challenged.** Petitioner is challenging both the May 20, 2013 and March 15, 2014 Amendments to the Trust.

20. **Lack of Capacity.** Based upon the foregoing facts and others, Petitioner is informed and believes that from in or around early 2013 and thereafter, Edna lacked the requisite capacity to contract, to enter into amendments to the Trust Agreement, and to execute new Wills.

21. **Undue Influence.** Further, beginning in and around late 2012 and continuing thereafter, Respondent Melinda abused her relationship with Edna, as well as Edna’s diminishing capacity and susceptibility, to expose Edna to continuing and increasing undue influence. Specifically, Melinda isolated Edna and caused her to feel increasingly estranged from her only close family members, her niece and nephew, and inserted herself into Edna’s estate plan in increasing amounts.
22. Melinda occupied a position of trust and confidence with Edna and misused that trust and confidence when she influenced Edna to complete and execute the May 2013 and March 2014 Trust Amendments naming Melinda as beneficiary. Melinda also abused her position of trust and confidence for her own personal benefit. Specifically, Petitioner is informed and believes that Melinda caused Edna to liquidate her Charles Schwab account and that Melinda converted the resulting proceeds for her own benefit.

23. At the time of the drafting and execution of the May 2013 and March 2014 Trust Amendments, Edna was wholly and/or substantially under the influence of Melinda. Melinda’s undue influence and persuasion induced Edna to name her as a beneficiary under the May 2013 and March 2014 Trust Amendments, first as to Edna’s house and later as to the entirety of the Trust estate. These Trust Amendments were not a result of free and voluntary acts of Edna, but were procured by the undue influence of Melinda.

24. Petitioner is informed and believes that Edna lacked any independent legal advice when the May 2013 and March 2014 Trust Amendments were created. The only legal advice she received was from the attorney hand-picked by Melinda. In fact, Petitioner is informed and believes that Alice Sutton, the drafting attorney, was actually Melinda’s own private attorney.

25. Isolation. Over the last several years, as described above, Melinda increasingly isolated Edna from her family and friends. During this time, Melinda began to slowly take over all aspects of Edna’s life, controlling her finances as well and obtaining a financial power of attorney.

26. Melinda Is a Disqualified Person. With respect to both challenged Trust Amendments, Melinda is a “disqualified person” pursuant to Probate Code section 21350(a) in that she was not related to Edna by blood or marriage AND she was:

a. A person who had a fiduciary relationship with Edna and caused the Trust Amendments to be transcribed; and

b. A care custodian of Edna who was a dependent adult.
27. To date, no Certificate of Independent Review for either the May 2013 or March 2014 Trust Amendment has been produced by Melinda and Petitioner is informed and believes that no such Certificate exists.

28. **Edna’s Mistake of Law or Fact.** Due to Melinda’s unabated control, influence, and isolation over Edna, Melinda caused Edna to believe that Candy and Mark had stopped calling her and no longer cared about her. This was simply not true. Petitioner is informed and believes that Edna only executed the May 2013 and March 2014 Trust Amendments upon the mistaken belief that Candy and Mark had stopped talking to Edna on their own volition.

**E. REMOVAL OF MELINDA BROOKS AS TRUSTEE**

29. Petitioner realleges the allegations of Paragraphs 1 through 17 above as though set forth in full herein.

30. Once the March 2014 Amendment is invalidated pursuant to Petitioner’s Trust Contest alleged above, then Melinda will have no further right to serve as Trustee as she is named as such only under that challenged amendment.

31. Melinda is also subject to removal pursuant to Probate Code section 15642(b)(1) for committing the breach of trust described above at Paragraph 14 (the liquidation and conversion of the Charles Schwab account) and any and all such other breaches of trust that may be discovered during the discovery and investigation of this case.

32. Further, Melinda is also subject to removal pursuant to Probate Code section 15642(b)(6) because she is acting as a sole trustee and is a person described in subdivision (a)(3) of Section 21380. Specifically, Melinda was acting as the care custodian of the Trustor, a dependent adult, at the time the Trust Amendment naming her as Successor Trustee was executed. The Trustor Edna is not related by blood or marriage to Melinda. Further, to Petitioner’s knowledge, the Trust was not reviewed by an independent attorney and a Certificate of Independent Review executed by said attorney.

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F.

APPOINTMENT OF TEMPORARY NEUTRAL SUCCESSOR TRUSTEE

33. Petitioner realleges the allegations of Paragraphs 1 through 17 above as though set forth in full herein.

34. Under Probate Code §17206, this Court has the power, in its discretion, to:
   “make any orders and take any other action necessary and proper
to dispose of the matters presented by the petition, including the
appointment of a temporary trustee to administer the trust in
whole or in part.”

Melinda has already converted Trust property. There is a Trust Contest now pending between the parties. As such, there is a substantial risk of further misappropriation of Trust property by Respondent if Respondent is not immediately suspended as Trustee forthwith. A Temporary Trustee should be appointed to act until the Trust Contest between the parties is resolved.

Petitioner Candy and her brother Mark were the named Successor Co-Trustees from 2006, when the Trust was initially established, until March 2014, when Melinda unduly influenced Edna to amend her Trust just months before Edna’s death. As such, Candy and Mark should be appointed Temporary Trustees. Alternatively, this Court should at least appoint a neutral, professional to serve as Temporary Trustee.

35. In the alternative, should this Court decide to keep Melinda in place as Trustee, then Petitioner requests an order that Respondent Melinda Brooks be prohibited and enjoined from transferring, selling, conveying and/or publishing any Trust property or information.

Further, all Trust monies should be frozen except for a small amount of funds that can be used to pay funeral and other routine trust expenses, but not trustee and attorney’s fees until further order of the Court.

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G.

ORDER FOR MELINDA BROOKS TO RETURN ASSETS BACK TO TRUST;
DOUBLE DAMAGES

36. Petitioner realleges the allegations of Paragraphs 1 through 17 above as though set forth in full herein.

37. As alleged in Paragraph 14 above, Petitioner is informed and believes that Melinda caused Edna to liquidate a substantial portion of her Charles Schwab account and then converted the proceeds for her own personal benefit. Edna always lived frugally and had sufficient monthly income to meet her ongoing living expenses without having to dip into principal. There would have been no reason for Edna to have otherwise liquidated a substantial portion of her Charles Schwab account but for the undue influence of Melinda. Petitioner requests an order under Probate Code §856 ordering Respondent to transfer title, possession, and control of all converted assets back to the Trust, as well as any other relief as this Court deems appropriate.

38. Respondent’s actions in converting Trust assets for his own personal use were a bad faith, wrongful taking, concealment, and disposition of property belonging to the Trust. Accordingly, Respondent should be held liable for twice the value of any and all property recovered in these proceedings pursuant to Probate Code §859.

39. Petitioner’s investigation and discovery have only just begun. It may be that Melinda committed other acts of financial elder abuse and wrongful taking from the Trust while Edna was still alive that will be proven at the time of trial. As the proximate cause of Melinda’s conversions, the Trust has been damaged in a sum to be shown according to proof.

40. **Double Damages.** Candy is informed and believes that the Trust property converted by Melinda was wrongfully taken, concealed, or disposed of by Melinda in bad faith. Pursuant to Probate Code Section 859, Candy requests that the Court find that Melinda is liable to the Trust for twice the value of the property recovered from her.

41. Melinda’s wrongful acts as alleged herein which occurred while Edna was alive amounted to elder financial abuse upon Edna as defined by California Welfare and Institutions
Code §15610.30. Accordingly, Petitioner is also seeking an award of attorney’s fees pursuant to California Welfare and Institutions Code §15657.5.

H.

ACCOUNTING

42. Petitioner realleges the allegations of Paragraphs 1 through 17 above as though set forth in full herein.

43. Although Melinda did not take over officially as Successor Trustee until after Edna died, Melinda has been acting as the de facto trustee of the Trust for some time. Candy believes that this has been going on since sometime in 2013 when the Charles Schwab account was substantially liquidated. A material breach of the trust has occurred and Melinda should be ordered to account for all of her acts and transactions with respect to both the Trust’s assets and Edna’s personal assets (as Edna’s pour-over will, Exh. B, p. 2, would leave all assets to the Trust) from at least January 2013 to the present.

I.

PRAYER

WHEREFORE the Petitioner requests that the Court enter an order as follows:

1. All notices have been given as required by law;

2. The May 2013 and March 2014 Trust Amendments are hereby declared invalid and of no force and effect;

3. Respondent Melinda Brooks is removed as Successor Trustee or, alternatively, immediately suspended as Successor Trustee pending further order of the Court;

4. Petitioner Candy Johnson and Mark Griswold are appointed as Temporary and/or Successor Trustees or, alternatively, a neutral professional shall be appointed as Temporary Trustee pending the resolution of this Petition;

5. Respondent Melinda Brooks shall immediately deliver all Trust assets to the duly appointed Successor Trustees and/or Temporary Trustee;

6. [Alternatively] All Trust assets are hereby blocked and frozen except for $30,000, which may be used to pay necessary expenditures such as the Decedent’s and Trust’s
necessary expenses and funeral expenses, but excluding the payment of any trustee or attorney’s
fees, pending further order of this Court.

7. [Alternatively] Respondent is hereby prohibited and enjoined from transferring,
hypothecating, encumbering, borrowing against, pledging, releasing, assigning, conveying, or
selling any property owned by the Trust including but not limited to the residence located at 123
Whitmore Place, Orange, CA and legally described as:

“Lot 3 of Block 5 ......”

Respondent is further prohibited and enjoined from publishing any information in which the
Trust had an ownership interest at the time of the Decedent’s death, pending further order of
this Court.

8. Respondent Melinda Brooks shall formally account within 60 days for all of her
acts and transactions with regard to the Trust and its assets, as well as the personal assets of
Edna Griswold, whether acting as a de facto trustee, trustee de son tort, sole trustee or co-
trustee;

9. Respondent Melinda Brooks shall be held liable for the return of property to the
Trust that was converted by her without legal authority in an amount according to proof,
including interest at the legal rate;

10. Respondent Melinda Brooks shall be held liable to the Trust for twice the value
of the property recovered from her;

11. For costs of suit and attorney’s fees herein incurred; and

12. For such further and other relief as this Court deems appropriate.

Dated: September 1, 2015

Respectfully submitted:

WRIGHT KIM DOUGLAS, ALC

By: _________________________

Lauriann Wright
Attorneys for Petitioner Candy Johnson
VERIFICATION

[Code of Civil Procedure §§ 446 and 2015.5]

Re:    The Edna Griswold Living Trust

I, the undersigned, say:

I am the Petitioner in the above-referenced matter and the son of the proposed Conservatee. I have read the foregoing document which bears the title:

TRUST CONTEST AND PETITION FOR:
(1) DETERMINATION OF INVALIDITY OF TRUST AMENDMENTS;
(2) REMOVAL OF MELINDA BROOKS AS TRUSTEE;
(3) APPOINTMENT OF TEMPORARY SUCCESSOR TRUSTEE;
(4) ORDER FOR MELINDA BROOKS TO RETURN ASSETS BACK TO TRUST; AND
(5) ACCOUNTING

and know the contents thereof and that the same is true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on September 1, 2015 at Boise, Idaho.

×
Candy Johnson
APPENDIX 4
COMMON INTEREST AGREEMENT

This Common Interest Agreement ("Agreement") sets forth and confirms the agreement by and between Party One, Party Two, and Party Three (sometimes collectively referred to as the "Parties," which term, for the purposes of the Agreement, shall include their counsel, which at this time are the law firms of WRIGHT KIM DOUGLAS, ALC and the LAW OFFICE OF A. NOTHER LAWYER, respectively), regarding the sharing of privileged and confidential documents and information ("Documents and Information"). The parties wish to share Documents and Information in connection with their evaluation and defense of the claims and the petition/complaint of Plaintiff Petitioner in the litigation entitled In re the Matter of the Estate of Decedent, Los Angeles Superior Court Case No. BP000000, and the associated actions entitled In re the Matter of the Conservatorship of the Person and Estate of Conservatee, Los Angeles Superior Court Case No. BP111111, and In re the Estate of Decedent Two, Los Angeles Superior Court Case No. BP222222, necessarily including any petitions for affirmative relief therein by the Parties (collectively, "the Claims").

Inasmuch as the Parties have common interests in defending the Claims, the Parties seek to protect these common interests by reaching the following agreement:

1. **Sharing of Documents And Information**

   All Documents and Information, including, without limitation, paper, telephonic, in person, or electronic communications, that the Parties have prepared in conjunction with one another, shared with each other, or may in the future share with each other, shall be subject to the terms of this Agreement, for the purposes of furthering the interests of the Parties in defending the Claims. Nothing in this Agreement shall obligate any Party to exchange Documents or Information with any other Party. The Agreement shall not apply to or restrict the use of Documents and Information that are obtained in a manner other than pursuant to the Agreement.

2. **Preservation Of Common Interest Doctrine/Joint Defense Privilege**

   The Agreement confirms the understanding between the Parties that to the extent they have shared Documents and Information in the past, and to the extent they will share Documents and Information in the future, the Parties will preserve the confidentiality of all Documents and Information provided to one another. The exchange of Documents and Information will not constitute a waiver of any privilege, including the attorney-client privilege and the work product doctrine. Execution of this Agreement constitutes the Parties' agreement that any consultations among the Parties or their counsel, and any sharing or pooling of Documents and Information, are done in reliance on the common interest doctrine/joint defense privilege under any and all applicable State and Federal law.
3. **Assertion Of Common Interest Doctrine/Joint Defense Privilege**

Absent an order from the court compelling disclosure, Documents and Information may not be disclosed by the recipient to any other person without the consent of each of the Parties to the Agreement. The Parties agree that the common interest doctrine/joint defense privilege as it relates to the Documents and Information may not be waived except with the consent of all signatories to this Agreement. The Parties to this Agreement shall make all appropriate objections and motions with respect to any discovery requests that purport to seek Documents and Information.

4. **Limited Waiver Of Privilege As Between The Parties, And Retention of Separate Privileges**

The Parties acknowledge that, as between the Parties only, the sharing of Documents and Information may waive the attorney-client privilege and work product doctrine as to such shared Documents and Information, but only to the extent of such shared Documents and Information. Any such limited waiver, if found to exist, shall not constitute or be implied to constitute a waiver of any remaining privileges of any of the Parties, including the attorney-client privilege between a Party and such Party's counsel with respect to Documents and Information.

5. **Termination Of This Agreement And Survival Of Privileges And Waivers**

Any Party may at any time terminate this Agreement as to that Party on a prospective basis only by giving notice to counsel for the other parties. All Parties, including the terminating Party, shall continue to comply with the terms of this Agreement with respect to all Documents and Information shared among any of the parties prior to any such termination of the Agreement. Accordingly, the provisions of the Agreement relating to the preservation and assertion of the common interest doctrine/joint defense privilege shall survive the termination of this Agreement by one or more Parties. Upon request, all Documents and Information shall be returned by or to the terminating Party, as the case may be, except insofar as such Documents and Information are no longer privileged or were obtained in a manner other than pursuant to the Agreement. Each Party recognizes that in the process of sharing information, each is represented by counsel as set forth above, and each Party agrees that should litigation between the Parties arise, no Party shall seek to disqualify any other Party's counsel on the ground that said counsel received confidential information pursuant to the Agreement.

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**COMMON INTEREST AGREEMENT**
6. **Signing Of This Agreement**

The Agreement is binding as to and between all Parties who have executed the Agreement, notwithstanding the failure or election of any other Party or Parties to do so. This Agreement may be executed in counterparts, each of which is deemed to be an original, but such counterparts together shall constitute one and the same instrument. A facsimile signature shall be deemed an original, and is binding.

Date: _______________  By: __________________________

PARTY ONE

Date: _______________  By: __________________________

PARTY TWO

Date: _______________  By: __________________________

WRIGHT KIM DOUGLAS, ALC
Attorneys for Party One and Party Two

Date: _______________  By: __________________________

PARTY THREE

Date: _______________  By: __________________________

LAW OFFICES OF A. NOTHER LAWYER
Attorneys for PARTY THREE
ADDENDUM TO COMMON INTEREST AGREEMENT

This Addendum to the Agreement augments the previous agreement by and between the Parties regarding the sharing of Documents and Information. The Parties wish to share Documents and Information in connection with their evaluation and defense of the claims and the petition/complaint of Plaintiff/Petitioner in the litigation entitled *In re the Matter of the Estate of Decedent*, Los Angeles Superior Court Case No. BP000000, and the associated actions entitled *In re the Matter of the Conservatorship of the Person and Estate of Conservatee*, Los Angeles Superior Court Case No. BP111111, and *In re the Estate of Decedent Two*, Los Angeles Superior Court Case No. BP222222, necessarily including any petitions for affirmative relief therein by the Parties.

Respondent/Defendant Party Five (who, for the purposes of the Agreement, shall include his counsel, which at this time is the law firm of WRIGHT KIM DOUGLAS, ALC), also being a party responding to the Claims, shares the same common interest as the Parties hereto, hereby agrees to submit to and be bound by each and every term of the Parties’ Common Interest Agreement, and does hereby join himself therein without reservation.

Date: _______________  By: ________________________________
PARTY FIVE

Date: _______________  By: ________________________________
WRIGHT KIM DOUGLAS, ALC
Attorneys for Parties One, Two, & Five

Accepted by the Parties by:

Date: _______________  By: ________________________________
WRIGHT KIM DOUGLAS, ALC
Attorneys for Party One & Party Two

Date: _______________  By: ________________________________
LAW OFFICES OF A. NOTHER LAWYER
Attorneys for Party Three

COMMON INTEREST AGREEMENT
APPENDIX 5
September 10, 2015

VIA FACSIMILE AND U.S. MAIL

Alice Sutton
1234 Los Angeles St.
Los Angeles, CA 90012

Re:  The Edna Griswold Living Trust dtd July 1, 2006
     LASC Case No. XXXX

Dear Counsel:

I am in receipt of your letter dated December 10, 2014. You have asserted the attorney-client privilege in order to object to our subpoena seeking your estate planning file for the Decedent/Settlor Edna Griswold.

As you may know, my client is the Petitioner in a Trust Contest currently being litigated in the above-referenced proceedings. Given the allegations in these proceedings, the attorney-client privilege would not apply. Specifically, several Evidence Code sections hold that there is no privilege at all as to a deceased client in the following circumstances:

- **Evidence Code §957:** “There is no privilege under this article as to a communication relevant to an issue between parties all of whom claim through a deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.”

- **Evidence Code §959:** “There is no privilege under this article as to a communication relevant to an issue concerning the intention or competence of a client executing an attested document of which the lawyer is an attesting witness, or concerning the execution or attestation of such a document.”
Letter to: Alice Sutton
Date: September 10, 2015
Page: 2

- **Evidence Code §960:** "There is no privilege under this article as to a communication relevant to an issue concerning the intention of a client, now deceased, with respect to a deed of conveyance, will, or other writing, executed by the client, purporting to affect an interest in property."

- **Evidence Code §961:** "There is no privilege under this article as to a communication relevant to an issue concerning the validity of a deed of conveyance, will, or other writing, executed by a client, now deceased, purporting to affect an interest in property."

All of these code sections apply to the allegations in these proceedings and the documents being sought under the subject subpoena. The attorney-client privilege simply does not apply.

We look forward to the prompt production of your complete file without redaction. If you fail to do so within 10 days, we intend to promptly move to compel production. Thank you for your cooperation in this matter.

Sincerely yours,

Lauriann Wright

LAW/law
cc: Randy Snarl, Esq. via email
     Client via email
APPENDIX 6
MEMO RE: RECORDS ONLY SUBPOENAS
the how-to guide

In general, 3 TYPES of subpoenas:

1. Appearance, No Records (JC Form SUBP-015)
2. Appearance and Records (JC Form SUBP-002)
3. Records only (or Business Records subpoena) (JC Form SUBP-010)

This memo addresses the LAST type of subpoena, for business records.

WHEN CONSUMER RECORDS ARE REQUESTED:

CCP §§2020.020(b); 2020.410; 2025.220(b)

(Requires a 5 DAY HOLD prior to service of Subpoena on Custodian of Records)

Step 1: Prepare Subpoena on JC Form SUBP-010.

• Must be served at least 20 days before deposition date and Notice to Consumer requires a 5-day hold (+5 days for mailing; so total 10 day hold); so, generally, set deposition date 30 days out to allow process server enough time to effectuate personal service.

• Direct subpoena to Custodian of Records or some other person qualified to authenticate records.

• Check box 1a so they are required to mail copies of subpoenaed docs to us. (NOTE: 1a is limited to professional photocopyers under CCP § 2020.420, or exempted persons under B&P § 22451, which includes members of the State Bar and employees, agents or independent contractors of the State Bar).

  - 1a requires Declaration of Custodian of Records
  
  - 1b requires Declaration of Custodian of Records and we must pick up records at the Custodian’s office.
1c requires both Dec. of CR and Declaration of Attorney Issuing Subpoena

- Reasonably particularize categories of documents.
- Unlike Special Interrogatories on parties, Subpoenas can have preface with Definitions and Instructions. Just don’t go crazy. Definitions and Instructions that expand and complicate an otherwise permissible description of categories in a deposition subpoena may make the demand burdensome. See Calor Space Facility Inc. v. Sup.Ct. (Thiem Industries, Inc.) (1997) 53 Cal. App. 4th 216, 223 (detailed “definitions” and “instructions” turned each of 32 documents requests into a complicated “category” described in more than 6 pages; held “particularly obnoxious” and “grossly excessive”)

Step 2: Serve the following 3 documents on Consumer and Parties in the case:

- Subpoena
- Notice of Privacy Rights (SUBP-025)
- Proof of Service re: Subpoena and Notice of Privacy Rts

Step 3: 5 days after Step 2 (service on parties and consumer), have process server personally serve on Custodian of Records the 3 documents listed above, Subpoena on top of the stack, PLUS also serve:

- A blank Declaration of Custodian of Records to be completed and sent with documents so we can authenticate them for trial.

Step 4: Time for compliance: no sooner than 20 days after issuance or 15 days after service. Make sure process server serves in time so that sufficient time provided prior to deposition date chosen.

Step 5: Pay copying costs: $24/hour clerical time; $.10 per page copies; $.20 per page microfilm; postage

What are Personal Records? [CCP §1985.3(a)(1)]

They are maintained by any "witness" which is a

physician, dentist, ophthalmologist, optometrist, chiropractor, physical therapist, acupuncturist, podiatrist, veterinarian, veterinary hospital, veterinary clinic, pharmacist, pharmacy, hospital, medical center, clinic, radiology or MRI center, clinical or diagnostic laboratory, state or national bank, state or federal association state or federal credit union, trust company, anyone authorized by this state to make or arrange loans that are secured by
real property, security brokerage firm, insurance company, title insurance company, underwritten title company, escrow agent attorney, accountant, institution of the Farm Credit System, telephone corporation, psychotherapist, a private or public preschool, elementary school, secondary school, or postsecondary school

**Who is a Consumer?**

[CCP §1985.3(a)(2)]

Any individual, partnership of five or fewer persons, association, or trust which has transacted business with, or has used the services of, the witness or for whom the witness has acted as agent or fiduciary.

[NOTE: Unlikely to include a deceased person, and word ESTATE not listed.]
NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION

TO (name):

1. PLEASE TAKE NOTICE THAT REQUESTING PARTY (name):
   SEeks your records for examination by the parties to this action on (specify date):
   The records are described in the subpoena directed to witness (specify name and address of person or entity from whom records are sought):
   A copy of the subpoena is attached.

2. IF YOU OBJECT to the production of these records, YOU MUST DO ONE OF THE FOLLOWING BEFORE THE DATE SPECIFIED, IN ITEM a. OR b. BELOW:
   a. If you are a party to the above-entitled action, you must file a motion pursuant to Code of Civil Procedure section 1987.1 to quash or modify the subpoena and give notice of that motion to the witness and the deposition officer named in the subpoena at least five days before the date set for production of the records.
   b. If you are not a party to this action, you must serve on the requesting party and on the witness, before the date set for production of the records, a written objection that states the specific grounds on which production of such records should be prohibited. You may use the form below to object and state the grounds for your objection. You must complete the Proof of Service on the reverse side indicating whether you personally served or mailed the objection. The objection should not be filed with the court. WARNING: IF YOUR OBJECTION IS NOT RECEIVED BEFORE THE DATE SPECIFIED IN ITEM 1, YOUR RECORDS MAY BE PRODUCED AND MAY BE AVAILABLE TO ALL PARTIES.

3. YOU OR YOUR ATTORNEY MAY CONTACT THE UNDERSIGNED to determine whether an agreement can be reached in writing to cancel or limit the scope of the subpoena. If no such agreement is reached, and if you are not otherwise represented by an attorney in this action, YOU SHOULD CONSULT AN ATTORNEY TO ADVISE YOU OF YOUR RIGHTS OF PRIVACY.

Date: ____________________________

(TYPE OR PRINT NAME) (SIGNATURE OF [ ] REQUESTING PARTY [ ] ATTORNEY)

OBJECTION BY NON-PARTY TO PRODUCTION OF RECORDS

1. [ ] I object to the production of all of my records specified in the subpoena.

2. [ ] I object only to the production of the following specified records:

3. The specific grounds for my objection are as follows:

Date: ____________________________

(TYPE OR PRINT NAME) (SIGNATURE)
PROOF OF SERVICE OF NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. I served a copy of the Notice to Consumer or Employee and Objection as follows (check either a or b):
   a. [ ] Personal service. I personally delivered the Notice to Consumer or Employee and Objection as follows:
      (1) Name of person served:
      (2) Address where served:
      (3) Date served:
      (4) Time served:
   b. [ ] Mail. I deposited the Notice to Consumer or Employee and Objection in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed as follows:
      (1) Name of person served:
      (2) Address:
      (3) Date of mailing:
      (4) Place of mailing (city and state):
      (5) I am a resident of or employed in the county where the Notice to Consumer or Employee and Objection was mailed.
   c. My residence or business address is (specify):
   d. My phone number is (specify):
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date:

(TYPE OR PRINT NAME OF PERSON WHO SERVED)  (SIGNATURE OF PERSON WHO SERVED)

PROOF OF SERVICE OF OBJECTION TO PRODUCTION OF RECORDS

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. I served a copy of the Objection to Production of Records as follows (complete either a or b):
   a. ON THE REQUESTING PARTY
      (1) [ ] Personal service. I personally delivered the Objection to Production of Records as follows:
         (i) Name of person served:
         (ii) Address where served:
         (iii) Date served:
         (iv) Time served:
      (2) [ ] Mail. I deposited the Objection to Production of Records in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed as follows:
         (i) Name of person served:
         (ii) Address:
         (iii) Date of mailing:
         (iv) Place of mailing (city and state):
         (v) I am a resident of or employed in the county where the Objection to Production of Records was mailed.
   b. ON THE WITNESS
      (1) [ ] Personal service. I personally delivered the Objection to Production of Records as follows:
         (i) Name of person served:
         (ii) Address where served:
         (iii) Date served:
         (iv) Time served:
      (2) [ ] Mail. I deposited the Objection to Production of Records in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed as follows:
         (i) Name of person served:
         (ii) Address:
         (iii) Date of mailing:
         (iv) Place of mailing (city and state):
         (v) I am a resident of or employed in the county where the Objection to Production of Records was mailed.
3. My residence or business address is (specify):
4. My phone number is (specify):
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date:

(TYPE OR PRINT NAME OF PERSON WHO SERVED)  (SIGNATURE OF PERSON WHO SERVED)
APPENDIX 7
INFORMATION FOR DEPOSITION SUBPOENA
FOR PRODUCTION OF BUSINESS RECORDS

You, as the Custodian of Records, were served with a Subpoena for the production of business records in connection with ongoing litigation. It is essential to the outcome to this case that the terms of the Subpoena be complied with. The purpose of this information sheet is to give you a rough guide to respond to the Subpoena. Businesses are generally not in the legal profession and many times business entities are unfamiliar with procedures associated with production of business records. Below there are some guidelines which you might find helpful in responding to the Subpoena. If you have an attorney, you may wish to have him/her review the Subpoena and your response thereto.

The Subpoena requires you to do two basic acts. The first is to locate and copy the records that are listed in paragraph three of the Subpoena. The second act is for the Custodian of the Records to sign one of two possible affidavits or declarations. The first is a simple declaration if after a diligent search no records are found. The second is where you as the Custodian of Records has located records pertaining to the Subpoena. This affidavit or declaration states that you are the authorized custodian of the records, that the copies provided are true copies of the original records, that the records were made in the ordinary course of business and that all records have been provided. Enclosed with the Subpoena is an affidavit form. After your search kindly complete and return the affidavit along with the records, if any.

Evidence Code Section 1563(b) outlines reimbursement and method for payment of reasonable costs to you for your efforts in locating, retrieving and copying the records requested in the Subpoena. Below is a copy of Evidence Code Section 1563 (b) 1-3 which should aid you in determining your fee for reasonable costs incurred with the compliance with the deposition Subpoena.

(b) All reasonable costs incurred in a civil proceeding by any witness which is not a party with respect to the production of all or any part of business records the production of which is requested pursuant to a subpoena duces tecum may be charged against the party serving the subpoena duces tecum.

(1) “Reasonable cost,” as used in this section, shall include, but not be limited to, the following specific costs: ten cents ($0.10) per page for standard reproduction of documents of a size 8 ½ by 14 inches or less; twenty cents ($0.20) per page for copying of documents from microfilm; actual costs for the reproduction of oversize documents or the reproduction of
documents requiring special processing which are made in response to a subpoena; reasonable clerical costs incurred in locating and making the records available to be billed at a maximum rate of sixteen dollars ($24) per hour per person, computed on the basis of four dollars ($6) per quarter hour or fraction thereof; actual postage charges; and the actual cost, if any, charged to the witness by a third person for the retrieval and return of records held offsite by that third person.

(2) The requesting party, or the requesting party’s deposition officer, shall not be required to pay those costs or any estimate thereof prior to the time the records are available for delivery pursuant to the subpoena, but the witness may demand payment of costs pursuant to this section simultaneous with actual delivery of the subpoenaed records, and until payment is made, is under no obligation to deliver the records.

(3) The witness shall submit an itemized statement for the costs to the requesting party, or the requesting party’s deposition officer, setting forth the reproduction and clerical costs incurred by the witness. Should the costs exceed those authorized by in paragraph (1), or the witness refuses to produce an itemized statement of costs as required by paragraph (3), upon demand of the requesting party, or the requesting party’s deposition officer, the witness shall furnish a statement setting forth the actions taken by the witness in justification of the costs.

Lastly, if you should have any questions or need more information regarding your obligations under this Subpoena, feel free to contact my office and I shall attempt to provide you with any assistance possible.

Thank you,

Wright Kim Douglas, ALC
130 S. Jackson St.
Glendale, CA 91205
T: (626) 356-3900
F: (626) 298-8600
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

In the Matter of:

THE EDNA GRISWOLD
LIVING TRUST DATED
JULY 1, 2006.

CANDY JOHNSON,
Petitioner,

vs.

MELINDA BROOKS, an individual and
as Trustee of the Edna Griswold Living
Trust;

Respondent.

Case No. ____________________________

DECLARATION OF CUSTODIAN OF
RECORDS

certifies and declares as follows:

1. I am over the age of 18 years and not a party to this action.

2. My business address is: ________________________________

3. My employment, business or occupation is: ________________________________
4. I am the duly authorized custodian of the following described business records:

5. The records were prepared by the personnel of the business in the ordinary course of business at or near the time of the acts, conditions or events recorded.

6. A deposition subpoena has been served upon me for production of the said business records.

7. I have delivered all of the records requested in the subpoena (except for ________________) to the attorneys for the subpoenaing party, Wright Kim Douglas, ALC, or his or her representative, for copying pursuant to Evidence Code section 1560, subdivision (e).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: ________________, 2015

Declarant
APPENDIX 8
THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
Custodian of Records, Alice Sutton, 1234 Los Angeles St., Los Angeles CA 90012

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

   To (name of deposition officer): Lauriann Wright
   On (date): January 5, 2016
   Location (address): 130 S. Jackson St., Glendale CA 91205, (626)356-3900
   At (time): 10:00 am

   Do not release the requested records to the deposition officer prior to the date and time stated above.

   a. ☑ by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
   b. ☐ by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness’s address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1583.5(b).
   c. ☐ by making the original business records described in item 3 available for inspection at your business address by the attorney’s representative and permitting copying at your business address under reasonable conditions during normal business hours.

2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1561(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1581.

3. The records to be produced are described as follows (if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified):

   See Attachment 3

   ☑ Continued on Attachment 3.

4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1885.3 OR 1885.8 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

   DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: December 15, 2015
Lauriann Wright

(SIGNATURE OF PERSON ISSUING SUBPOENA)

Attorney for Petitioner Candy Johnson
PLAINTIFF/PETITIONER: The Edna Griswold Trust

DEFENDANT/RESPONDENT: Candy Johnson v. Melinda Brooks

CASE NUMBER: XXXX

PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS

1. I served this Deposition Subpoena for Production of Business Records by personally delivering a copy to the person served as follows:
   a. Person served (name):
   
   b. Address where served:
   
   c. Date of delivery:
   
   d. Time of delivery:
   
   e. (1) ☐ Witness fees were paid.
       Amount: ____________________ $ ____________________
   
       (2) ☐ Copying fees were paid.
       Amount: ____________________ $ ____________________
   
   f. Fee for service: ____________________ $ ____________________

2. I received this subpoena for service on (date):

3. Person serving:
   a. ☐ Not a registered California process server.
   b. ☐ California sheriff or marshal.
   c. ☐ Registered California process server.
   d. ☐ Employee or independent contractor of a registered California process server.
   e. ☐ Exempt from registration under Business and Professions Code section 22350(b).
   f. ☐ Registered professional copier.
   g. ☐ Exempt from registration under Business and Professions Code section 22451.
   h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: ____________________

(SIGNATURE)

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date: ____________________

(SIGNATURE)
ATTACHMENT 3 TO DEPOSITION SUBPOENA

1. The terms "YOU and "YOUR" as used herein refers to Alice Sutton, as well as any other predecessors in interest, successors in interest, affiliates, parent companies, subsidiaries, directors, officers, employees, agents, and attorneys of Alice Sutton.

2. "PETITIONER" as used herein refers to Candy Johnson.

3. "RESPONDENT" as used herein refers to Melinda Brooks.

4. "EDNA GRISWOLD", as used herein refers to Edna Griswold, born December 1, 1928, died July 23, 2014, with a social security number of 560-28-7403.

5. "EDNA GRISWOLD TRUST" as used herein refers to any family trust in the name of EDNA GRISWOLD, including any successor trusts and/or residual trusts, whether superseded or revoked including, but not limited to the Edna Griswold Trust, dated July 1, 2006, as amended.

6. The "DATE OF PRODUCTION" shall mean the actual date that documents are due for production to the deposition officer.

7. "DOCUMENT(S)", as used herein, refers to notes, memoranda, letters, telegrams, telexes, cables, reports, studies, analyses, charts, tables, tabulations, compilations, summaries, contracts, indices, abstracts, recordings, tape recordings, drawings, blueprints, labels, tags, pleadings, testimony, speeches, articles, books, pamphlets, brochures, magazines, newspapers, calendars, diaries, minute orders, photographs, moving pictures, microfilm, computer printouts, advertisements and memorials of oral communications (whether by telephone or face-to-face), including originals, as well as non-conforming copies, no matter how prepared, in your actual or constructive possession, custody or control.

8. "PERSON", as used herein, refers to any natural person, governmental entity, agency, commission, authority, or representative thereof, firm, corporation, partnership, association, joint venture or other form of legal entity, and shall be deemed to mean in the plural as well as in the singular.
9. "CORRESPONDENCE", as used herein, refers to letters, telegrams, telexes, cables, memoranda or other writings mailed, delivered or otherwise transmitted to any person, as person is defined herein.

10. "IDENTIFY", "IDENTIFYING", "IDENTITY" OR "IDENTITIES", as used herein, in connection with a reference to a person, shall include the person’s full name, occupation, home and business addresses, and home and business telephone numbers. The reference “to” any date specified herein shall be deemed to include such date.

11. The singular number shall be read and applied as a plural, and the plural number shall be read and applied as a singular, as the circumstances may make appropriate.

With respect to each DOCUMENT otherwise responsive to this request, but withheld on the ground of an asserted privilege, please identify with respect to each such document the following information:

a. The exact nature and scope of the privilege asserted;
b. The date of the DOCUMENT;
c. The IDENTITY of the author of the DOCUMENT;
d. The IDENTITY of the PERSON who received the original of the DOCUMENT;
e. The IDENTITY of each PERSON who received a copy of the DOCUMENT;
f. and the subject of the DOCUMENT.

**TIME PERIOD**

Unless otherwise specified, the applicable time period for which DOCUMENTS are to be produced is from July 1, 2006 to the DATE OF PRODUCTION.

///

27 ///

28 ///
SCOPE OF DOCUMENTS TO BE PRODUCED

ALL REQUESTS FOR DOCUMENTATION HEREIN SHALL INCLUDE, BUT
NOT BE LIMITED TO HARD COPY, MICROFILM, MICROFICHE, COMPUTER
MEDIA, NETWORK, E-MAIL OR ANY OTHER MEDIA ON WHICH THE
REQUESTED INFORMATION IS MAINTAINED OR RECORDED.

DOCUMENTS TO BE PRODUCED

1. Your entire client file and any and all other DOCUMENTS CONCERNING your
former client, decedent EDNA GRISWOLD.

2. All DOCUMENTS CONCERNING correspondence, notes, memoranda, drafts,
contracts, agreements, telephone calls and/or conferences, meetings, conversations and
DOCUMENTS of any kind referring to and/or relating to the estate planning for EDNA
GRISWOLD, including but not limited to the EDNA GRISWOLD TRUST and any and all
amendments and restatements thereto.

***

ATTACHMENT 3 TO DEPOSITION SUBPOENA
THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
Custodian of Records for Dr. David R. Smith, MD., XXXXX

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

<table>
<thead>
<tr>
<th>To (name of deposition officer):</th>
<th>Lauriann Wright</th>
</tr>
</thead>
<tbody>
<tr>
<td>On (date):</td>
<td>January 5, 2016</td>
</tr>
<tr>
<td>Location (address):</td>
<td>130 S. Jackson St., Glendale CA 91205, (626)356-3900</td>
</tr>
<tr>
<td>At (time):</td>
<td>10:00 am</td>
</tr>
</tbody>
</table>

- Do not release the requested records to the deposition officer prior to the date and time stated above.
- By delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
- By delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
- By making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.

2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.

3. The records to be produced are described as follows (if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified):

See Attachment 3

4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.5 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: December 10, 2015

Lauriann Wright

(SIGNATURE OF PERSON ISSUING SUBPOENA)

Attorney for Petitioner Candy Johnson

(TITLE)
PLAINTIFF/PETITIONER: The Edna Griswold Trust:  
DEFENDANT/RESPONDENT: Candy Johnson v. Melinda Brooks  

PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS

1. I served this Deposition Subpoena for Production of Business Records by personally delivering a copy to the person served as follows:
   a. Person served (name):
   b. Address where served:
   c. Date of delivery:
   d. Time of delivery:
   e. (1) [ ] Witness fees were paid.  
      Amount: ________________________ $
   (2) [ ] Copying fees were paid.  
      Amount: ________________________ $
   f. Fee for service: ________________________ $

2. I received this subpoena for service on (date):

3. Person serving:
   a. [ ] Not a registered California process server.
   b. [ ] California sheriff or marshal.
   c. [ ] Registered California process server.
   d. [ ] Employee or independent contractor of a registered California process server.
   e. [ ] Exempt from registration under Business and Professions Code section 22350(b).
   f. [ ] Registered professional photocopier.
   g. [ ] Exempt from registration under Business and Professions Code section 22451.
   h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: ________________________

(SIGNATURE)

(For California sheriff or marshal use only)

I certify that the foregoing is true and correct.

Date: ________________________

(SIGNATURE)
ATTACHMENT 3 TO DEPOSITION SUBPOENA

1. The terms “YOU and “YOUR” as used herein refers to DR. DAVID R. SMITH, MD., as well as any other predecessors in interest, successors in interest, affiliates, parent companies, subsidiaries, directors, officers, employees, agents, and attorneys of DR. DAVID R. SMITH, MD.

2. “EDNA GRISWOLD”, as used herein refers to Edna Griswold, born Dec. 1, 1928, died July 23, 2104, with a social security number of 560-28-7403.

3. The “DATE OF PRODUCTION” shall mean the actual date that documents are due for production to the deposition officer.

4. “DOCUMENT(S)”, as used herein, refers to notes, memoranda, letters, telegrams, telexes, cables, reports, studies, analyses, charts, tables, tabulations, compilations, summaries, contracts, indices, abstracts, recordings, tape recordings, drawings, blueprints, labels, tags, pleadings, testimony, speeches, articles, books, pamphlets, brochures, magazines, newspapers, calendars, diaries, minute orders, photographs, moving pictures, microfilm, computer printouts, advertisements and memorials of oral communications (whether by telephone or face-to-face), including originals, as well as non-conforming copies, no matter how prepared, in your actual or constructive possession, custody or control.

5. “PERSON”, as used herein, refers to any natural person, governmental entity, agency, commission, authority, or representative thereof, firm, corporation, partnership, association, joint venture or other form of legal entity, and shall be deemed to mean in the plural as well as in the singular.

6. “CORRESPONDENCE”, as used herein, refers to letters, telegrams, telexes, cables, memoranda or other writings mailed, delivered or otherwise transmitted to any person, as person is defined herein.

7. “IDENTIFY”, “IDENTIFYING”, “IDENTITY” OR “IDENTITIES”, as used herein, in connection with a reference to a person, shall include the person’s full name, occupation, home and business addresses, and home and business telephone numbers. The
reference "to" any date specified herein shall be deemed to include such date.

8. The singular number shall be read and applied as a plural, and the plural number shall be read and applied as a singular, as the circumstances may make appropriate. With respect to each DOCUMENT otherwise responsive to this request, but withheld on the ground of an asserted privilege, please identify with respect to each such document the following information:

a. The exact nature and scope of the privilege asserted;
b. The date of the DOCUMENT;
c. The IDENTITY of the author of the DOCUMENT;
d. The IDENTITY of the PERSON who received the original of the DOCUMENT;
e. The IDENTITY of each PERSON who received a copy of the DOCUMENT; and
f. The subject of the DOCUMENT.

TIME PERIOD

Unless otherwise specified, the applicable time period for which DOCUMENTS are to be produced is from July 1, 2006 to the DATE OF PRODUCTION.

SCOPE OF DOCUMENTS TO BE PRODUCED

ALL REQUESTS FOR DOCUMENTATION HEREBIN SHALL INCLUDE, BUT NOT BE LIMITED TO HARD COPY, MICROFILM, MICROFICHE, COMPUTER MEDICA, NETWORK, E-MAIL OR ANY OTHER MEDIA ON WHICH THE REQUESTED INFORMATION IS MAINTAINED OR RECORDED.

DOCUMENTS TO BE PRODUCED

1. All medical records related to your patient decedent EDNA GRISWOLD, including all records, charts, correspondence, reports, notes, memos, prescriptions, test results, and documents of any kind.

***
THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):

Custodian of Records, Wells Fargo Bank, N.A., 1550 No. Vermont Ave., Los Angeles CA 90027

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

To (name of deposition officer): Lauriann Wright
On (date): January 5, 2016
At (time): 10:00 am
Location (address): 130 S. Jackson St., Glendale CA 91205, (626)356-3900

Do not release the requested records to the deposition officer prior to the date and time stated above.

a. ✓ by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.

b. by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).

c. by making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.

2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.

3. The records to be produced are described as follows (if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified):

See Attachment 3
✓ Continued on Attachment 3.

4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.4 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: December 15, 2015
Bryan Su

(Approved of service on reverse)
 Ağustos 19, 2015

(SIGNATURE OF PERSON ISSUING SUBPOENA)

Attorney for Petitioner Candy Johnson
PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS

1. I served this Deposition Subpoena for Production of Business Records by personally delivering a copy to the person served as follows:
   a. Person served (name):

   b. Address where served:

   c. Date of delivery:

   d. Time of delivery:

   e. (1) [ ] Witness fees were paid.
       Amount: __________________ $ __________________
   (2) [ ] Copying fees were paid.
       Amount: __________________ $ __________________

   f. Fee for service: __________________ $ __________________

2. I received this subpoena for service on (date):

3. Person serving:
   a. [ ] Not a registered California process server.
   b. [ ] California sheriff or marshal.
   c. [ ] Registered California process server.
   d. [ ] Employee or independent contractor of a registered California process server.
   e. [ ] Exempt from registration under Business and Professions Code section 22350(b).
   f. [ ] Registered professional photocopier.
   g. [ ] Exempt from registration under Business and Professions Code section 22451.
   h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(SIGNATURE)

(For California sheriff or marshal use only)

I certify that the foregoing is true and correct.

Date:

(SIGNATURE)
ATTACHMENT 3 TO DEPOSITION SUBPOENA

1. The terms "YOU" and "YOUR" as used herein refers to WELLS FARGO BANK, N.A., as well as any other predecessors in interest, successors in interest, affiliates, parent companies, subsidiaries, directors, officers, employees, agents, and attorneys of WELLS FARGO BANK, N.A..

2. "PETITIONER" as used herein refers to Candy Johnson.

3. "RESPONDENT" as used herein refers to Melinda Brooks.

4. "EDNA GRISWOLD", as used herein refers to Edna Griswold, born December 1, 1928, died July 23, 2014, with a social security number of 560-28-7403.

5. "EDNA GRISWOLD TRUST" as used herein refers to any family trust in the name of EDNA GRISWOLD, including any successor trusts and/or residual trusts, whether superseded or revoked including, but not limited to the Edna Griswold Trust, dated July 1, 2006, as amended.

6. The "DATE OF PRODUCTION" shall mean the actual date that documents are due for production to the deposition officer.

7. "DOCUMENT(S)", as used herein, refers to notes, memoranda, letters, telegrams, telexes, cables, reports, studies, analyses, charts, tables, tabulations, compilations, summaries, contracts, indices, abstracts, recordings, tape recordings, drawings, blueprints, labels, tags, pleadings, testimony, speeches, articles, books, pamphlets, brochures, magazines, newspapers, calendars, diaries, minute orders, photographs, moving pictures, microfilm, computer printouts, advertisements and memorials of oral communications (whether by telephone or face-to-face), including originals, as well as non-conforming copies, no matter how prepared, in your actual or constructive possession, custody or control.

8. "PERSON", as used herein, refers to any natural person, governmental entity, agency, commission, authority, or representative thereof, firm, corporation, partnership, association, joint venture or other form of legal entity, and shall be deemed to mean in the plural

WRIGHT KIM DOUGLAS
A Law Corporation
as well as in the singular.

9. "CORRESPONDENCE", as used herein, refers to letters, telegrams, telexes, cables, memoranda or other writings mailed, delivered or otherwise transmitted to any person, as person is defined herein.

10. "IDENTIFY", "IDENTIFYING", "IDENTITY" OR "IDENTITIES", as used herein, in connection with a reference to a person, shall include the person's full name, occupation, home and business addresses, and home and business telephone numbers. The reference “to” any date specified herein shall be deemed to include such date.

11. The singular number shall be read and applied as a plural, and the plural number shall be read and applied as a singular, as the circumstances may make appropriate. With respect to each DOCUMENT otherwise responsive to this request, but withheld on the ground of an asserted privilege, please identify with respect to each such document the following information:

a. The exact nature and scope of the privilege asserted;
b. The date of the DOCUMENT;
c. The IDENTITY of the author of the DOCUMENT;
d. The IDENTITY of the PERSON who received the original of the DOCUMENT;
e. The IDENTITY of each PERSON who received a copy of the DOCUMENT;
f. and the subject of the DOCUMENT.

TIME PERIOD

Unless otherwise specified, the applicable time period for which DOCUMENTS are to be produced is from July 1, 2006 to the DATE OF PRODUCTION.

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SCOPE OF DOCUMENTS TO BE PRODUCED

ALL REQUESTS FOR DOCUMENTATION HEREIN SHALL INCLUDE, BUT
NOT BE LIMITED TO HARD COPY, MICROFILM, MICROFICHE, COMPUTER
MEDICA, NETWORK, E-MAIL OR ANY OTHER MEDIA ON WHICH THE
REQUESTED INFORMATION IS MAINTAINED OR RECORDED.

DOCUMENTS TO BE PRODUCED

1. Bank statements, check registers or stubs, cancelled checks, signature card(s),
   passbooks, certificates of deposit, and any other documents reflecting deposits, withdrawals,
   transfers and exchange of funds at any bank or financial institution having money in its
   possession, owned by EDNA GRISWOLD, or standing in the name of EDNA GRISWOLD, or
   upon which EDNA GRISWOLD is authorized to sign, whether individually or jointly with any
   other PERSON or entity, in accounts including but not limited to:

   a. 1000-814002
   b. 6740-814003
   c. 0878-814004

2. Bank statements, check registers or stubs, cancelled checks, signature card(s),
   passbooks, certificates of deposit, and any other documents reflecting deposits, withdrawals and
   exchange of funds at any bank or financial institution having money in its possession, belonging
   to or standing in the name of any trust, proprietorship, corporation, partnership, limited
   partnership, joint venture or other business entity in which EDNA GRISWOLD has or had an
   interest, whether individually or jointly with any other PERSON or entity including, but not
   limited to, the EDNA GRISWOLD TRUST, in accounts including but not limited to:

   a. 1000-814002
   b. 6740-814003
   c. 0878-814004

3. Rental applications, agreements, signature cards, and all other records reflecting
   or relating to the rental of, rights of access to, and the contents of any safe deposit box in which
   EDNA GRISWOLD has or has had an interest, whether alone or jointly with any other PERSON
or entity, including but not limited to, the EDNA GRISWOLD TRUST.

4. Copies of any and all loan applications and statements of loan accounts for all loans applied for by EDNA GRISWOLD, and/or any trust, proprietorship, corporation, limited partnership, joint venture, or any other business entity in which EDNA GRISWOLD has or has had an interest including, but not limited to the EDNA GRISWOLD TRUST whether or not such loans were accepted or approved.

5. Copies of any and all loan applications and statements of loan accounts for all loans guaranteed, underwritten or collateralized by EDNA GRISWOLD, and/or any trust, proprietorship, corporation, limited partnership, joint venture, or any other business entity in which EDNA GRISWOLD has or has had an interest including, but not limited to the EDNA GRISWOLD TRUST whether or not such loans were accepted or approved.

6. Copies of any and all DOCUMENTS supporting any and all loan applications applied for, guaranteed, underwritten or collateralized by EDNA GRISWOLD and/or any trust, proprietorship, corporation, limited partnership, joint venture, or any other entity in which EDNA GRISWOLD has or has had an interest, individually or jointly, including, but not limited to, documents reflecting, relating and/or regarding income, assets, debts and liabilities, whether or not said loans were taken or approved.

7. Copies of any and all monthly or other periodic statements and charge vouchers reflecting the use of charge accounts by EDNA GRISWOLD, or in the name of SOPHIE KRISTOVICH, whether individually or jointly with any other PERSON including, but not limited to, the EDNA GRISWOLD TRUST, and including credit card applications related thereto.

8. Any and all notes, memoranda, correspondence, referring to or regarding EDNA GRISWOLD, and/or any trust, proprietorship, corporation, limited partnership, joint venture, or any other entity in which EDNA GRISWOLD has or has had an interest including, but not limited to, the EDNA GRISWOLD TRUST.

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APPENDIX 9
## Form Interrogatories—General

**Asking Party:** Petitioner Candy Johnson  

**Answering Party:** Respondent Melinda Brooks  

### Sec. 1. Instructions to All Parties

(a) Interrogatories are written questions prepared by a party to an action that are sent to any other party in the action to be answered under oath. The interrogatories below are form interrogatories approved for use in civil cases.

(b) For time limitations, requirements for service on other parties and other details, see Code of Civil Procedure sections 2030.010–2030.410 and the cases construing those sections.

(c) These form interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or make any objection.

### Sec. 2. Instructions to the Asking Party

(a) These interrogatories are designed for optional use by parties in unlimited civil cases where the amount demanded exceeds $25,000. Separate interrogatories, Form Interrogatories—Limited Civil Cases (Economic Litigation) (form DISC-004), which have no subparts, are designed for use in limited civil cases where the amount demanded is $25,000 or less; however, those interrogatories may also be used in unlimited civil cases.

(b) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.

(c) You may insert your own definition of INCIDENT in Section 4, but only where the action arises from a course of conduct or a series of events occurring over a period of time.

(d) The interrogatories in section 15.0, Defendant's Contentions—Personal Injury, should not be used until the defendant has had a reasonable opportunity to conduct an investigation or discovery of plaintiff's injuries and damages.

(e) Additional interrogatories may be attached.

### Sec. 3. Instructions to the Answering Party

(a) An answer or other appropriate response must be given to each interrogatory checked by the asking party.

(b) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See Code of Civil Procedure sections 2030.260–2030.270 for details.

(c) Each answer must be as complete and straightforward as the information reasonably available to you, including the information possessed by your attorneys or agents, permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

(d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

(e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

(f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.

(g) If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.

(h) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

```
I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.
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(_____)  

(DATE)  

(SIGNATURE)

### Sec. 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

(a) (Check one of the following):

- INCIDENT includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.
(2) INCIDENT means (insert your definition here or on a separate, attached sheet labeled “Sec. 4(6)(2)”).

Edna Griswold’s execution of instruments changing her Trust’s testamentary dispositions in May 2013 and March 2014

(b) YOU OR ANYONE ACTING ON YOUR BEHALF includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

(c) PERSON includes a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

(d) DOCUMENT means a writing, as defined in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostats, photographs, electronically stored information, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(e) HEALTH CARE PROVIDER includes any PERSON referred to in Code of Civil Procedure section 667.7(e)(3).

(f) ADDRESS means the street address, including the city, state, and zip code.

Sec. 5. Interrogatories
The following interrogatories have been approved by the Judicial Council under Code of Civil Procedure section 2033.710:

CONTENTS
1.0 Identity of Persons Answering These Interrogatories
2.0 General Background Information—Individual
3.0 General Background Information—Business Entity
4.0 Insurance
5.0 [Reserved]
6.0 Physical, Mental, or Emotional Injuries
7.0 Property Damage
8.0 Loss of Income or Earning Capacity
9.0 Other Damages
10.0 Medical History
11.0 Other Claims and Previous Claims
12.0 Investigation—General
13.0 Investigation—Surveillance
14.0 Statutory or Regulatory Violations
15.0 Deriaja and Special or Affirmative Defenses
16.0 Defendant’s Contentions Personal Injury
17.0 Responses to Request for Admissions
18.0 [Reserved]
19.0 [Reserved]
20.0 How the Incident Occurred—Motor Vehicle
25.0 [Reserved]
30.0 [Reserved]
40.0 [Reserved]
50.0 Contract
60.0 [Reserved]
70.0 Unlawful Detainer [See separate form DISC-003]
101.0 Economic Litigation [See separate form DISC-004]
200.0 Employment Law [See separate form DISC-002]
Family Law [See separate form FL-145]

1.0 Identity of Persons Answering These Interrogatories

1.1 State the name, ADDRESS, telephone number, and relationship to you of each PERSON who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

2.0 General Background Information—individual

2.1 State:
(a) your name;
(b) every name you have used in the past; and
(c) the dates you used each name.

2.2 State the date and place of your birth.

2.3 At the time of the INCIDENT, did you have a driver’s license? If so state:
(a) the state or other issuing entity;
(b) the license number and type;
(c) the date of issuance; and
(d) all restrictions.

2.4 At the time of the INCIDENT, did you have any other permit or license for the operation of a motor vehicle? If so, state:
(a) the state or other issuing entity;
(b) the license number and type;
(c) the date of issuance; and
(d) all restrictions.

2.5 State:
(a) your present residence ADDRESS;
(b) your residence ADDRESSES for the past five years; and
(c) the dates you lived at each ADDRESS.

2.6 State:
(a) the name, ADDRESS, and telephone number of your present employer or place of self-employment; and
(b) the name, ADDRESS, dates of employment, job title, and nature of work for each employer or self-employment you have had from five years before the INCIDENT until today.

2.7 State:
(a) the name and ADDRESS of each school or other academic or vocational institution you have attended, beginning with high school;
(b) the dates you attended;
(c) the highest grade level you have completed; and
(d) the degrees received.

2.8 Have you ever been convicted of a felony? If so, for each conviction state:
(a) the city and state where you were convicted;
(b) the date of conviction;
(c) the offense; and
(d) the court and case number.

2.9 Can you speak English with ease? If not, what language and dialect do you normally use?

2.10 Can you read and write English with ease? If not, what language and dialect do you normally use?
2.11 At the time of the INCIDENT were you acting as an agent or employee for any PERSON? If so, state:
(a) the name, ADDRESS, and telephone number of that PERSON; and
(b) a description of your duties.

2.12 At the time of the INCIDENT did you or any other person have any physical, emotional, or mental disability or condition that may have contributed to the occurrence of the INCIDENT? If so, for each person state:
(a) the name, ADDRESS, and telephone number;
(b) the nature of the disability or condition; and
(c) the manner in which the disability or condition contributed to the occurrence of the INCIDENT.

2.13 Within 24 hours before the INCIDENT did you or any person involved in the INCIDENT use or take any of the following substances: alcoholic beverage, marijuana, or other drug or medication of any kind (prescription or not)? If so, for each person state:
(a) the name, ADDRESS, and telephone number;
(b) the nature or description of each substance;
(c) the quantity of each substance used or taken;
(d) the date and time of day when each substance was used or taken;
(e) the ADDRESS where each substance was used or taken;
(f) the name, ADDRESS, and telephone number of each person who was present when each substance was used or taken; and
(g) the name, ADDRESS, and telephone number of any HEALTH CARE PROVIDER who prescribed or furnished the substance and the condition for which it was prescribed or furnished.

3.0 General Background Information—Business Entity

3.1 Are you a corporation? If so, state:
(a) the name stated in the current articles of incorporation;
(b) all other names used by the corporation during the past 10 years and the dates each was used;
(c) the date and place of incorporation;
(d) the ADDRESS of the principal place of business; and
(e) whether you are qualified to do business in California.

3.2 Are you a partnership? If so, state:
(a) the current partnership name;
(b) all other names used by the partnership during the past 10 years and the dates each was used;
(c) whether you are a limited partnership and, if so, under the laws of what jurisdiction;
(d) the name and ADDRESS of each general partner; and
(e) the ADDRESS of the principal place of business.

3.3 Are you a limited liability company? If so, state:
(a) the name stated in the current articles of organization;
(b) all other names used by the company during the past 10 years and the date each was used;
(c) the date and place of filing of the articles of organization;
(d) the ADDRESS of the principal place of business; and
(e) whether you are qualified to do business in California.

3.4 Are you a joint venture? If so, state:
(a) the current joint venture name;
(b) all other names used by the joint venture during the past 10 years and the dates each was used;
(c) the name and ADDRESS of each joint venturer; and
(d) the ADDRESS of the principal place of business.

3.5 Are you an unincorporated association? If so, state:
(a) the current unincorporated association name;
(b) all other names used by the unincorporated association during the past 10 years and the dates each was used; and
(c) the ADDRESS of the principal place of business.

3.6 Have you done business under a fictitious name during the past 10 years? If so, for each fictitious name state:
(a) the name;
(b) the dates each was used;
(c) the state and county of each fictitious name filing; and
(d) the ADDRESS of the principal place of business.

3.7 Within the past five years has any public entity registered or licensed your business? If so, for each license or registration:
(a) identify the license or registration;
(b) state the name of the public entity; and
(c) state the dates of issuance and expiration.

4.0 Insurance

4.1 At the time of the INCIDENT, was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the INCIDENT? If so, for each policy state:
(a) the kind of coverage;
(b) the name and ADDRESS of the insurance company;
(c) the name, ADDRESS, and telephone number of each named insured;
(d) the policy number;
(e) the limits of coverage for each type of coverage contained in the policy;
(f) whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company; and
(g) the name, ADDRESS, and telephone number of the custodian of the policy.

4.2 Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the INCIDENT? If so, specify the statute.

5.0 [Reserved]

6.0 Physical, Mental, or Emotional Injuries

6.1 Do you attribute any physical, mental, or emotional injuries to the INCIDENT? (If your answer is “no,” do not answer interrogatories 6.2 through 6.7).

6.2 Identify each injury you attribute to the INCIDENT and the area of your body affected.
6.3 Do you still have any complaints that you attribute to the INCIDENT? If so, for each complaint state:
(a) a description;
(b) whether the complaint is subsiding, remaining the same, or becoming worse; and
(c) the frequency and duration.

6.4 Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310) or treatment from a HEALTH CARE PROVIDER for any injury you attribute to the INCIDENT? If so, for each HEALTH CARE PROVIDER state:
(a) the name, ADDRESS, and telephone number;
(b) the type of consultation, examination, or treatment provided;
(c) the dates you received consultation, examination, or treatment; and
(d) the charges to date.

6.5 Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the INCIDENT? If so, for each medication state:
(a) the name;
(b) the PERSON who prescribed or furnished it;
(c) the date it was prescribed or furnished;
(d) the dates you began and stopped taking it; and
(e) the cost to date.

6.6 Are there any other medical services necessitated by the injuries that you attribute to the INCIDENT that were not previously listed (for example, ambulance, nursing, prosthetics)? If so, for each service state:
(a) the nature;
(b) the date;
(c) the cost; and
(d) the name, ADDRESS, and telephone number of each provider.

6.7 Has any HEALTH CARE PROVIDER advised you that you may require future or additional treatment for any injuries that you attribute to the INCIDENT? If so, for each injury state:
(a) the name and ADDRESS of each HEALTH CARE PROVIDER;
(b) the complaints for which the treatment was advised; and
(c) the nature, duration, and estimated cost of the treatment.

7.0 Property Damage
7.1 Do you attribute any loss of or damage to a vehicle or other property to the INCIDENT? If so, for each item of property:
(a) describe the property;
(b) describe the nature and location of the damage to the property;
(c) state the amount of damage you are claiming for each item of property and how the amount was calculated; and
(d) if the property was sold, state the name, ADDRESS, and telephone number of the seller, the date of sale, and the sale price.

7.2 Has a written estimate or evaluation been made for any item of property referred to in your answer to the preceding interrogatory? If so, for each estimate or evaluation state:
(a) the name, ADDRESS, and telephone number of the PERSON who prepared it and the date prepared;
(b) the name, ADDRESS, and telephone number of each PERSON who has a copy of it; and
(c) the amount of damage stated.

7.3 Has any item of property referred to in your answer to interrogatory 7.1 been repaired? If so, for each item state:
(a) the date repaired;
(b) a description of the repair;
(c) the repair cost;
(d) the name, ADDRESS, and telephone number of the PERSON who repaired it;
(e) the name, ADDRESS, and telephone number of the PERSON who paid for the repair.

8.0 Loss of Income or Earning Capacity
8.1 Do you attribute any loss of income or earning capacity to the INCIDENT? (If your answer is "no," do not answer interrogatories 8.2 through 8.8).
8.2 State:
(a) the nature of your work;
(b) your job title at the time of the INCIDENT; and
(c) the date your employment began.
8.3 State the last date before the INCIDENT that you worked for compensation.
8.4 State your monthly income at the time of the INCIDENT and how the amount was calculated.
8.5 State the date you returned to work at each place of employment following the INCIDENT.
8.6 State the dates you did not work and for which you lost income as a result of the INCIDENT.
8.7 State the total income you have lost to date as a result of the INCIDENT and how the amount was calculated.
8.8 Will you lose income in the future as a result of the INCIDENT? If so, state:
(a) the facts upon which you base this contention;
(b) an estimate of the amount;
(c) an estimate of how long you will be unable to work; and
(d) how the claim for future income is calculated.
9.0 Other Damages

☐ 9.1 Are there any other damages that you attribute to the INCIDENT? If so, for each item of damage state:
   (a) the nature;
   (b) the date it occurred;
   (c) the amount; and
   (d) the name, ADDRESS, and telephone number of each PERSON to whom an obligation was incurred.

☐ 9.2 Do any DOCUMENTS support the existence or amount of any item of damages claimed in interrogatory 9.1? If so, describe each document and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT.

10.0 Medical History

☐ 10.1 At any time before the INCIDENT did you have complaints or injuries that involved the same part of your body claimed to have been injured in the INCIDENT? If so, for each state:
   (a) a description of the complaint or injury;
   (b) the dates it began and ended; and
   (c) the name, ADDRESS, and telephone number of each HEALTH CARE PROVIDER whom you consulted or who examined or treated you.

☐ 10.2 List all physical, mental, and emotional disabilities you had immediately before the INCIDENT. (You may omit mental or emotional disabilities unless you attribute any mental or emotional injury to the INCIDENT.)

☐ 10.3 At any time after the INCIDENT, did you sustain injuries of the kind for which you are now claiming damages? If so, for each incident giving rise to an injury state:
   (a) the date and the place it occurred;
   (b) the name, ADDRESS, and telephone number of any other PERSON involved;
   (c) the nature of any injuries you sustained;
   (d) the name, ADDRESS, and telephone number of each HEALTH CARE PROVIDER who you consulted or who examined or treated you; and
   (e) the nature of the treatment and its duration.

11.0 Other Claims and Previous Claims

☐ 11.1 Except for this action, in the past 10 years have you filed an action or made a written claim or demand for compensation for your personal injuries? If so, for each action, claim, or demand state:
   (a) the date, time, and place and location (closest street ADDRESS or intersection) of the INCIDENT giving rise to the action, claim, or demand;
   (b) the name, ADDRESS, and telephone number of each PERSON against whom the claim or demand was made or the action filed;
   (c) the court, names of the parties, and case number of any action filed;
   (d) the name, ADDRESS, and telephone number of any attorney representing you;
   (e) whether the claim or action has been resolved or is pending; and
   (f) a description of the injury.

☐ 11.2 In the past 10 years have you made a written claim or demand for workers' compensation benefits? If so, for each claim or demand state:
   (a) the date, time, and place of the INCIDENT giving rise to the claim;
   (b) the name, ADDRESS, and telephone number of your employer at the time of the injury;
   (c) the name, ADDRESS, and telephone number of the workers' compensation insurer and the claim number;
   (d) the period of time during which you received workers' compensation benefits;
   (e) a description of the injury;
   (f) the name, ADDRESS, and telephone number of any HEALTH CARE PROVIDER who provided services; and
   (g) the case number at the Workers' Compensation Appeals Board.

12.0 Investigation—General

☑ 12.1 State the name, ADDRESS, and telephone number of each individual:
   (a) who witnessed the INCIDENT or the events occurring immediately before or after the INCIDENT;
   (b) who made any statement at the scene of the INCIDENT;
   (c) who heard any statements made about the INCIDENT by any individual at the scene; and
   (d) who YOU OR ANYONE ACTING ON YOUR BEHALF claim has knowledge of the INCIDENT (except for expert witnesses covered by Code of Civil Procedure section 2034).

☑ 12.2 Have YOU OR ANYONE ACTING ON YOUR BEHALF interviewed any individual concerning the INCIDENT? If so, for each individual state:
   (a) the name, ADDRESS, and telephone number of the individual interviewed;
   (b) the date of the interview; and
   (c) the name, ADDRESS, and telephone number of the PERSON who conducted the interview.

☑ 12.3 Have YOU OR ANYONE ACTING ON YOUR BEHALF obtained a written or recorded statement from any individual concerning the INCIDENT? If so, for each statement state:
   (a) the name, ADDRESS, and telephone number of the individual from whom the statement was obtained;
   (b) the name, ADDRESS, and telephone number of the individual who obtained the statement;
   (c) the date the statement was obtained; and
   (d) the name, ADDRESS, and telephone number of each PERSON who has the original statement or a copy.
12.4 Do you or anyone acting on your behalf know of any photographs, films, or videotapes depicting any place, object, or individual concerning the INCIDENT or plaintiff's injuries? If so, state:
(a) the number of photographs or feet of film or videotape;
(b) the places, objects, or persons photographed, filmed, or videotaped;
(c) the date the photographs, films, or videotapes were taken;
(d) the name, ADDRESS, and telephone number of the individual taking the photographs, films, or videotapes; and
(e) the name, ADDRESS, and telephone number of each PERSON who has the original or a copy of the photographs, films, or videotapes.

12.5 Do you or anyone acting on your behalf know of any diagram, reproduction, or model of any place or thing (except for items developed by expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310) concerning the INCIDENT? If so, for each item state:
(a) the type (i.e., diagram, reproduction, or model);
(b) the subject matter; and
(c) the name, ADDRESS, and telephone number of each PERSON who has it.

12.6 Was a report made by any PERSON concerning the INCIDENT? If so, state:
(a) the name, title, identification number, and employer of the PERSON who made the report;
(b) the date and type of report made;
(c) the name, ADDRESS, and telephone number of the PERSON for whom the report was made; and
(d) the name, ADDRESS, and telephone number of each PERSON who has the original or a copy of the report.

12.7 Have you or anyone acting on your behalf inspected the scene of the INCIDENT? If so, for each inspection state:
(a) the name, ADDRESS, and telephone number of the individual making the inspection (except for expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310); and
(b) the date of the inspection.

13.0 Investigation—Surveillance

13.1 Have you or anyone acting on your behalf conducted surveillance of any individual involved in the INCIDENT or any party to this action? If so, for each surveillance state:
(a) the name, ADDRESS, and telephone number of the individual or party;
(b) the time, date, and place of the surveillance;
(c) the name, ADDRESS, and telephone number of the individual who conducted the surveillance; and
(d) the name, ADDRESS, and telephone number of each PERSON who has the original or a copy of any surveillance photograph, film, or videotape.

13.2 Has a written report been prepared on the surveillance? If so, for each written report state:
(a) the title;
(b) the date;
(c) the name, ADDRESS, and telephone number of the individual who prepared the report; and
(d) the name, ADDRESS, and telephone number of each PERSON who has the original or a copy.

14.0 Statutory or Regulatory Violations

14.1 Do you or anyone acting on your behalf contend that any PERSON involved in the INCIDENT violated any statute, ordinance, or regulation and that the violation was a legal (proximate) cause of the INCIDENT? If so, identify the name, ADDRESS, and telephone number of each PERSON and the statute, ordinance, or regulation that was violated.

14.2 Was any PERSON cited or charged with a violation of any statute, ordinance, or regulation as a result of this INCIDENT? If so, for each PERSON state:
(a) the name, ADDRESS, and telephone number of the PERSON;
(b) the statute, ordinance, or regulation allegedly violated;
(c) whether the PERSON entered a plea in response to the citation or charge and, if so, the plea entered; and
(d) the name and ADDRESS of the court or administrative agency, names of the parties, and case number.

15.0 Denials and Special or Affirmative Defenses

15.1 Identify each denial of a material allegation and each special or affirmative defense in your pleadings and for each:
(a) state all facts upon which you base the denial or special or affirmative defense;
(b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of those facts; and
(c) identify all DOCUMENTS and other tangible things that support your denial or special or affirmative defense, and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT.

16.0 Defendant's Contentions—Personal Injury

16.1 Do you contend that any PERSON, other than you or plaintiff, contributed to the occurrence of the INCIDENT or the injuries or damages claimed by plaintiff? If so, for each PERSON:
(a) state the name, ADDRESS, and telephone number of the PERSON;
(b) state all facts upon which you base your contention;
(c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts; and
(d) identify all DOCUMENTS and other tangible things that support your contention and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

16.2 Do you contend that plaintiff was not injured in the INCIDENT? If so:
(a) state all facts upon which you base your contention;
(b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts; and
(c) identify all DOCUMENTS and other tangible things that support your contention and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.
16.3 Do you contend that the injuries or the extent of the injuries claimed by plaintiff as disclosed in discovery proceedings thus far in this case were not caused by the INCIDENT? If so, for each injury:
(a) identify it;
(b) state all facts upon which you base your contention;
(c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts; and
(d) identify all DOCUMENTS and other tangible things that support your contention and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

16.4 Do you contend that any of the services furnished by any HEALTH CARE PROVIDER claimed by plaintiff in discovery proceedings thus far in this case were not due to the INCIDENT? If so:
(a) identify each service;
(b) state all facts upon which you base your contention;
(c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts; and
(d) identify all DOCUMENTS and other tangible things that support your contention and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

16.5 Do you contend that any of the costs of services furnished by any HEALTH CARE PROVIDER claimed as damages by plaintiff in discovery proceedings thus far in this case were not necessary or unreasonable? If so:
(a) identify each cost;
(b) state all facts upon which you base your contention;
(c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts; and
(d) identify all DOCUMENTS and other tangible things that support your contention and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

16.6 Do you contend that any part of the loss of earnings or income claimed by plaintiff in discovery proceedings thus far in this case was unreasonable or was not caused by the INCIDENT? If so:
(a) identify each part of the loss;
(b) state all facts upon which you base your contention;
(c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts; and
(d) identify all DOCUMENTS and other tangible things that support your contention and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

16.7 Do you contend that any of the property damage claimed by plaintiff in discovery Proceedings thus far in this case was not caused by the INCIDENT? If so:
(a) identify each item of property damage;
(b) state all facts upon which you base your contention;
(c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts; and
(d) identify all DOCUMENTS and other tangible things that support your contention and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

16.8 Do you contend that any of the costs of repairing the property damage claimed by plaintiff in discovery proceedings thus far in this case were unreasonable? If so:
(a) identify each cost item;
(b) state all facts upon which you base your contention;
(c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts; and
(d) identify all DOCUMENTS and other tangible things that support your contention and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

16.9 Do YOU OR ANYONE ACTING ON YOUR BEHALF have any DOCUMENT (for example, insurance bureau index reports) concerning claims for personal injuries made before or after the INCIDENT by a plaintiff in this case? If so, for each plaintiff state:
(a) the source of each DOCUMENT;
(b) the date each claim arose;
(c) the nature of each claim; and
(d) the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT.

16.10 Do YOU OR ANYONE ACTING ON YOUR BEHALF have any DOCUMENT concerning the past or present physical, mental, or emotional condition of any plaintiff in this case from a HEALTH CARE PROVIDER not previously identified (except for expert witnesses covered by Code of Civil Procedure sections 2034.210-2034.310)? If so, for each plaintiff state:
(a) the name, ADDRESS, and telephone number of each HEALTH CARE PROVIDER;
(b) a description of each DOCUMENT; and
(c) the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT.

17.0 Responses to Request for Admissions

17.1 Is your response to each request for admission served with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:
(a) state the number of the request;
(b) state all facts upon which you base your response;
(c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of those facts; and
(d) identify all DOCUMENTS and other tangible things that support your response and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

18.0 [Reserved]
19.0 [Reserved]

20.0 How the Incident Occurred—Motor Vehicle

20.1 State the date, time, and place of the INCIDENT (closest street ADDRESS or intersection).
20.2 For each vehicle involved in the INCIDENT, state:
(a) the year, make, model, and license number;
(b) the name, ADDRESS, and telephone number of the driver;
(c) the name, ADDRESS, and telephone number of each occupant other than the driver;
(d) the name, ADDRESS, and telephone number of each registered owner;
(e) the name, ADDRESS, and telephone number of each lessee;
(f) the name, ADDRESS, and telephone number of each owner other than the registered owner or lien holder; and
(g) the name of each owner who gave permission or consent to the driver to operate the vehicle.

☐ 20.3 State the ADDRESS and location where your trip began and the ADDRESS and location of your destination.

☐ 20.4 Describe the route that you followed from the beginning of your trip to the location of the INCIDENT, and state the location of each stop, other than routine traffic stops, during the trip leading up to the INCIDENT.

☐ 20.5 State the name of the street or roadway, the lane of travel, and the direction of travel of each vehicle involved in the INCIDENT for the 500 feet of travel before the INCIDENT.

☐ 20.6 Did the INCIDENT occur at an intersection? If so, describe all traffic control devices, signals, or signs at the intersection.

☐ 20.7 Was there a traffic signal facing you at the time of the INCIDENT? If so, state:
(a) your location when you first saw it;
(b) the color;
(c) the number of seconds it had been that color; and
(d) whether the color changed between the time you first saw it and the INCIDENT.

☐ 20.8 State how the INCIDENT occurred, giving the speed, direction, and location of each vehicle involved:
(a) just before the INCIDENT;
(b) at the time of the INCIDENT; and (c) just after the INCIDENT.

☐ 20.9 Do you have information that a malfunction or defect in a vehicle caused the INCIDENT? If so:
(a) identify the vehicle;
(b) identify each malfunction or defect;
(c) state the name, ADDRESS, and telephone number of each PERSON who is a witness to or has information about each malfunction or defect; and
(d) state the name, ADDRESS, and telephone number of each PERSON who has custody of each defective part.

☐ 20.10 Do you have information that any malfunction or defect in a vehicle contributed to the injuries sustained in the INCIDENT? If so:
(a) identify the vehicle;
(b) identify each malfunction or defect;
(c) state the name, ADDRESS, and telephone number of each PERSON who is a witness to or has information about each malfunction or defect; and
(d) state the name, ADDRESS, and telephone number of each PERSON who has custody of each defective part.

☐ 20.11 State the name, ADDRESS, and telephone number of each owner and each PERSON who has had possession since the INCIDENT of each vehicle involved in the INCIDENT.

☐ 25.0 [Reserved]
 ☐ 30.0 [Reserved]
 ☐ 40.0 [Reserved]

☐ 50.0 Contract

☐ 50.1 For each agreement alleged in the pleadings:
(a) identify each DOCUMENT that is part of the agreement and for each state the name, ADDRESS, and telephone number of each PERSON who has the DOCUMENT;
(b) state each part of the agreement not in writing, the name, ADDRESS, and telephone number of each PERSON agreeing to that provision, and the date that part of the agreement was made;
(c) identify all DOCUMENTS that evidence any part of the agreement not in writing and for each state the name, ADDRESS, and telephone number of each PERSON who has the DOCUMENT;
(d) identify all DOCUMENTS that are part of any modification to the agreement, and for each state the name, ADDRESS, and telephone number of each PERSON who has the DOCUMENT;
(e) state each modification not in writing, the date, and the name, ADDRESS, and telephone number of each PERSON agreeing to the modification, and the date the modification was made;
(f) identify all DOCUMENTS that evidence any modification of the agreement not in writing and for each state the name, ADDRESS, and telephone number of each PERSON who has the DOCUMENT.

☐ 50.2 Was there a breach of any agreement alleged in the pleadings? If so, for each breach describe and give the date of every act or omission that you claim is the breach of the agreement.

☐ 50.3 Was performance of any agreement alleged in the pleadings excused? If so, identify each agreement excused and state why performance was excused.

☐ 50.4 Was any agreement alleged in the pleadings terminated by mutual agreement, release, accord and satisfaction, or novation? If so, identify each agreement terminated, the date of termination, and the basis of the termination.

☐ 50.5 Is any agreement alleged in the pleadings unenforceable? If so, identify each unenforceable agreement and state why it is unenforceable.

☐ 50.6 Is any agreement alleged in the pleadings ambiguous? If so, identify each ambiguous agreement and state why it is ambiguous.

☐ 60.0 [Reserved]
APPENDIX 10
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

In the Matter of:

THE EDNA GRISWOLD LIVING TRUST DATED JULY 1, 2006.

CANDY JOHNSON,

Petitioner,

vs.

MELINDA BROOKS, an individual and as Trustee of the Edna Griswold Living Trust;

Respondent.

Case No. ___________________________

SPEICALLY PREPARED INTERROGATORIES PROPOUNDED UPON RESPONDENT MELINDA BROOKS BY PETITIONER CANDY JOHNSON,

SET NO. ONE (1)

PROPONDING PARTY : Petitioner Candy Johnson
RESPONDING PARTY : Respondent Melinda Brooks
SET NUMBER : ONE (1)

INTERROGATORIES

1. Please IDENTIFY by title, case number, and jurisdiction EACH lawsuit YOU have ever been involved in, either as a plaintiff/petitioner or defendant/respondent, during the
last ten (10) years.

[For purposes of these interrogatories,

○ "IDENTIFY" means the following:

(a) When used with respect to a natural person, shall mean to give his or her full
name, home ADDRESS and telephone number, and business ADDRESS and
telephone number.

(b) When used with respect to a PERSON other than a natural person, shall mean to
state its full name, the present and last known ADDRESS of its principal office or
place of doing business, and the type of entity (for example, corporation,
partnership, or unincorporated association).

(c) When used with respect to a DOCUMENT, shall mean to identify the document’s
author, signor, sender, addressee, and all recipients; to state the document’s title,
date, and number of pages; to describe its subject matter; and to state the
document’s present location, the name and ADDRESS of any PERSON currently
having custody or control of it, and any other descriptive information necessary to
identify such DOCUMENT sufficiently in a subpoena duces tecum or a request for
production.

(d) When used with respect to a COMMUNICATION other than a DOCUMENT,
shall mean to identify the person making the COMMUNICATION, its recipients,
and all natural persons who were present at the time the COMMUNICATION was
made, and to state the date, time, place, and subject matter of the
COMMUNICATION.

○ "EACH" includes “each and every.”

○ "YOU" and "YOURS" shall refer to you, the Responding Party specified above, and to
any of your predecessors or successors in interest; all entities or identities under which
you do or may have done business; any officers, employees, directors, agents, trustees,
and representatives; and all other persons acting or purporting to act on your behalf,
individually and collectively.]
2. Please **IDENTIFY** all **PERSONS** from whom **YOU** have ever received monies upon their death, whether by way of trust, will, pay-on-death-account, life insurance, or similar transfer.

   [For purposes of these interrogatories,
   • "**PERSON**" or "**PERSONS**" includes individuals, firms, associations, partnerships, joint ventures, corporations, other business or governmental entities, and all combinations of them.]

3. Please **IDENTIFY** all **PERSONS** for whom **YOU** have acted as a trustee of their trust.

4. Please **IDENTIFY** all **PERSONS** for whom **YOU** have acted as a personal representative of their estate.

5. Please **IDENTIFY** all **PERSONS** for whom **YOU** have acted as a conservator of their person or estate.

6. Please **IDENTIFY** all **PERSONS** that were involved with the preparation and drafting of the Edna Griswold Living Trust dated July 1, 2006.

7. Please describe **YOUR** involvement with the preparation and drafting of the Edna Griswold Living Trust dated July 1, 2006, if any.

8. Please **IDENTIFY** all **PERSONS** that were involved with the preparation and drafting of the May 20, 2013 First Amendment to the Edna Griswold Living Trust dated July 1, 2006.

9. Please describe **YOUR** involvement with the preparation and drafting of the May 20, 2013 First Amendment to the Edna Griswold Living Trust dated July 1, 2006, if any.

10. Please **IDENTIFY** all **PERSONS** that were involved with the preparation and drafting of the Advance Health Care Directive dated May 20, 2013.


12. Please **IDENTIFY** all **PERSONS** and/or entities that were involved with the preparation and drafting of the Durable Power of Attorney dated May 20, 2013.

14. Please state all facts in support of YOUR contention that the transfer to YOU under the May 20, 2013 First Amendment to the Edna Griswold Living Trust dated July 1, 2006 was not the product of fraud, menace, duress, or undue influence.

15. Please IDENTIFY all PERSONS having any knowledge CONCERNING each fact supporting YOUR contention that the transfer to YOU under the May 20, 2013 First Amendment to the Edna Griswold Living Trust dated July 1, 2006 was not the product of fraud, menace, duress, or undue influence.

[For these interrogatories,

• “CONCERNING” shall mean referring to, alluding to, responding to, relating to, connected with, commenting on, in respect of, about, regarding, discussing, showing, evidencing, describing, mentioning, reflecting, analyzing, and constituting. A document may concern a certain person or subject without that person being the sole or even significant topic of that document.]

16. Please identify all DOCUMENTS CONCERNING YOUR contention that the transfer to YOU under the May 20, 2013 First Amendment to the Edna Griswold Living Trust dated July 1, 2006 was not the product of fraud, menace, duress, or undue influence.

[For purposes of these interrogatories,

• “DOCUMENT” shall mean a writing, as defined by Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostating, photographing, electronic recording, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.]

17. Please state all facts in support of YOUR contention that the transfer to YOU under the May 20, 2013 First Amendment to the Edna Griswold Living Trust dated July 1, 2006 was not the product of fraud, menace, duress, or undue influence.

///
18. Please identify all PERSONS having any knowledge CONCERNING each fact supporting YOUR contention that the transfer to YOU under the May 20, 2013 First Amendment to the Edna Griswold Living Trust dated July 1, 2006 was not the product of fraud, menace, duress, or undue influence.

19. Please identify all DOCUMENTS CONCERNING YOUR contention that the transfer to YOU under the May 20, 2013 First Amendment to the Edna Griswold Living Trust dated July 1, 2006 was not the product of fraud, menace, duress, or undue influence.

20. Please identify all PERSONS that were involved with the preparation and drafting of the March 15, 2014 Second Amendment to the Edna Griswold Living Trust dated July 1, 2006.

21. Please describe YOUR involvement with the preparation and drafting of the March 15, 2014 Second Amendment to the Edna Griswold Living Trust dated July 1, 2006, if any.

22. Please state all facts in support of YOUR contention that the transfer to YOU under the March 15, 2014 Second Amendment to the Edna Griswold Living Trust dated July 1, 2006 was not the product of fraud, menace, duress, or undue influence.

23. Please identify all PERSONS having any knowledge CONCERNING each fact supporting YOUR contention that the transfer to YOU under the March 15, 2014 Second Amendment to the Edna Griswold Living Trust dated July 1, 2006 was not the product of fraud, menace, duress, or undue influence.

24. Please identify all DOCUMENTS CONCERNING YOUR contention that the transfer to YOU under the March 15, 2014 Second Amendment to the Edna Griswold Living Trust dated July 1, 2006 was not the product of fraud, menace, duress, or undue influence.

25. Please state all facts in support of YOUR contention that the transfer to YOU under the March 15, 2014 Second Amendment to the Edna Griswold Living Trust dated July 1, 2006 was not the product of fraud, menace, duress, or undue influence.

26. Please identify all PERSONS having any knowledge CONCERNING each fact supporting YOUR contention that the transfer to YOU under the March 15, 2014 Second
Amendment to the Edna Griswold Living Trust dated July 1, 2006 was not the product of fraud, menace, duress, or undue influence.

27. Please identify all DOCUMENTS CONCERNING YOUR contention that the transfer to YOU under the March 15, 2014 Second Amendment to the Edna Griswold Living Trust dated July 1, 2006 was not the product of fraud, menace, duress, or undue influence.

28. When did YOUR professional relationship with Edna Griswold begin?

29. When did YOUR personal relationship – i.e. the relationship outside your professional relationship – with Edna Griswold begin?

30. Please describe the nature of YOUR professional relationship with Edna Griswold at the time it began.

31. Please describe the nature of YOUR professional relationship with Edna Griswold in May 2013.

32. Please describe the nature of YOUR professional relationship with Edna Griswold in March 2014.

33. When did you begin to help Edna Griswold with her finances outside of your professional relationship?

34. From November 1, 2011 through the date of Edna Griswold’s death, please IDENTIFY those assets belonging to the Edna Griswold Living Trust dated July 1, 2006 that YOU helped to manage.

35. Please IDENTIFY all assets owned by the Edna Griswold Living Trust dated July 1, 2006 as of the date of Edna Griswold’s death.

36. From November 1, 2011 through the date of Edna Griswold’s death, please IDENTIFY those assets belonging to Edna Griswold that YOU helped to manage.

37. Please IDENTIFY all assets owned by Edna Griswold as of the date of her death.

38. Please IDENTIFY any monies or other property that YOU have received as a result of the death of Edna Griswold, including but not limited to pay-on-death-accounts, life insurance, or similar transfers.

39. Please IDENTIFY all expenses that YOU incurred for which Edna Griswold
reimbursed YOU.

40. Please describe what tasks YOU performed to assist Edna Griswold with her daily needs during the period November 1, 2011 through July 23, 2014.

41. Please IDENTIFY all other PERSONS who assisted Edna Griswold with her daily needs during the period November 1, 2011 through July 23, 2014.

42. For each person who was also assisting Edna Griswold with her daily needs during the period November 1, 2011 through July 23, 2014, please describe what tasks that person was performing.

43. Please describe what tasks YOU performed to assist Edna Griswold with her daily needs during the period November 1, 2011 through July 23, 2014.

44. Who is currently in possession of the original, signed Edna Griswold Living Trust dated July 1, 2006?

45. Who is currently in possession of the original, signed May 20, 2013 First Amendment to the Edna Griswold Living Trust dated July 1, 2006?

46. Who is currently in possession of the original, signed March 15, 2014 Second Amendment to the Edna Griswold Living Trust dated July 1, 2006?

47. How did Edna Griswold typically spend the “at least $1,000 per month in cash” that YOU claim YOU gave her to “use as she saw fit” as discussed in Paragraph 6 of YOUR Objections to Petition?

48. Please IDENTIFY all of Edna Griswold’s medical providers during the period beginning November 1, 2011 through the date of her death.

49. Please IDENTIFY all of Edna Griswold’s paid in-home caregivers, including but not limited to any company that they worked for, during the period beginning November 1, 2011 through the date of her death.

50. For each of the paid in-home caregivers identified in the preceding interrogatory, please state when they rendered their services for Edna Griswold.

51. Please IDENTIFY all PERSONS with whom Edna Griswold would regularly converse in or about May 2013.
52. Please IDENTIFY all PERSONS with whom Edna Griswold would regularly converse in or about March 2014.

53. Please IDENTIFY all PERSONS with whom Edna Griswold would discuss the testamentary terms of her trust during the period beginning November 1, 2011 through the date of her death.

54. When was Edna Griswold diagnosed with suffering from strokes?

55. When was Edna Griswold diagnosed with dementia?

56. When did YOU begin to notice any decline in Edna Griswold’s mental capacity?

57. When do YOU believe that Edna Griswold lost her capacity to make testamentary dispositions?

58. Please describe YOUR practices with regard to Edna Griswold’s mail in or around May 2013.

59. Please describe YOUR practices with regard to Edna Griswold’s mail in or around March 2014.

Dated: October 1, 2015

Respectfully submitted:

WRIGHT KIM DOUGLAS, ALC

By: ________________________________

Lauriann Wright
Attorneys for Petitioner Candy Johnson
DECLARATION OF LAURIANN WRIGHT
FOR ADDITIONAL DISCOVERY

I, LAURIANN WRIGHT, do hereby declare as follows:

1. I am an attorney at law duly admitted to practice before all the courts of the State of California. My firm Wright Kim Douglas, ALC is the attorney of record for Candy Johnson, the Petitioner in the Trust Contest pending in this action and the propounding party for the subject written discovery. I have personal knowledge of the facts set forth below, and if I am called upon to testify thereto, I could and would do so competently.

2. I am propounding to the Respondent Melinda Brooks, the attached set of Specially Prepared Interrogatories, Set No. One (1).

3. This set of Specially Prepared Interrogatories will cause the total number of Specially Prepared Interrogatories propounded to the party to whom they are directed to exceed the number of Specially Prepared Interrogatories permitted by paragraph (1) of subdivision (a) of Section 2030.030 of the Code of Civil Procedure.

4. I have previously propounded no other Specially Prepared Interrogatories upon this party.

5. This set of Specially Prepared Interrogatories contains a total of 59 interrogatories – only 24 more interrogatories than provided under the statute.

6. I am familiar with the issues in this action and the previous discovery conducted by all the parties in this case. This is the first discovery by the propounding party in this action.

The responding party himself has served substantial discovery on the propounding party including 105 special interrogatories.

7. I have personally examined each of the requests in this set of Specially Prepared Interrogatories.

8. This number of requests is warranted under subdivision (a) of Section 2033.040 of the Code of Civil Procedure because:

///
(a) the quantity of the existing and potential issues in this particular case involving detailed trust documents and events spanning over 8 years is extensive and the issues themselves are complex;

(b) this matter requires more discovery than normally would be the case to supply essential details and evidence supporting the parties’ respective allegations;

(c) the financial burden on the parties entailed by conducting this discovery by oral depositions is great;

(d) this discovery can largely be most cost-effectively conducted by written discovery like the herein Specially Prepared Interrogatories, which are specifically designed to pare down the disputed issues and to avoid unnecessary litigation of various issues by removing a large volume of foundational facts from controversy; and

(e) this is the most expedient method for the responding party to have an opportunity to conduct an inquiry, investigation, or search files or records to supply the information sought.

9. None of the questions in this set of Specially Prepared Interrogatories is being propounded for any improper purpose, such as to harass the party, or the attorney for the party, to whom it is directed, or to cause unnecessary delay or a needless increase in the cost of litigation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Glendale, California on October 1, 2015.

______________________________
Lauriann Wright
| INSTRUCTIONS |

Requests for admission are written requests by a party to an action requiring that any other party to the action either admit or deny, under oath, the truth of certain facts or the genuineness of certain documents. For information on timing, the number of admissions a party may request from any other party, service of requests and responses, restrictions on the style, format, and scope of requests for admission and responses to requests, and other details, see Code of Civil Procedure sections 94–95, 1013, and 2033.010–2033.420 and the case law relating to these sections.

An answering party should consider carefully whether to admit or deny the truth of facts or the genuineness of documents. With limited exceptions, an answering party will not be allowed to change an answer to a request for admission. There may be penalties if an answering party fails to admit the truth of any fact or the genuineness of any document when requested to do so and the requesting party later proves that the fact is true or that the document is genuine. These penalties may include, among other things, payment of the requesting party’s attorney’s fees incurred in making that proof.

Unless there is an agreement or a court order providing otherwise, the answering party must respond in writing to requests for admission within 30 days after they are served, or within 5 days after service in an unlawful detainer action. There may be significant penalties if an answering party fails to provide a timely written response to each request for admission. These penalties may include, among other things, an order that the facts in issue are deemed true or that the documents in issue are deemed genuine for purposes of the case.

Answers to Requests for Admission must be given under oath. The answering party should use the following language at the end of the responses:

_I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct._

(DATE)  (SIGNATURE)

These instructions are only a summary and are not intended to provide complete information about requests for admission. This Requests for Admission form does not change existing law relating to requests for admissions, nor does it affect an answering party’s right to assert any privilege or to make any objection.

| REQUESTS FOR ADMISSION |

You are requested to admit within 30 days after service, or within 5 days after service in an unlawful detainer action, of the Requests for Admission that:

1. ☑ Each of the following facts is true (if more than one, number each fact consecutively):
   - ☑ Continued on Attachment 1

2. ☑ The original of each of the following documents, copies of which are attached, is genuine (if more than one, number each document consecutively):
   - ☑ Continued on Attachment 2

Lauriann Wright

(TYPE OR PRINT NAME)  (SIGNATURE OF PARTY OR ATTORNEY)
ATTACHMENT 1
TO REQUEST FOR ADMISSIONS
Propounded by Petitioner Candy Johnson
Upon Respondent Melinda Brooks

EACH OF THE FOLLOWING FACTS IS TRUE:

1. In May 2013, you were in a fiduciary relationship with Edna Griswold.
2. In March 2014, you were in a fiduciary relationship with Edna Griswold.
3. In May 2013, Edna Griswold was a dependent adult as defined by Section 15610.23 of the California Welfare and Institutions Code.
4. In March 2014, Edna Griswold was a dependent adult as defined by Section 15610.23 of the California Welfare and Institutions Code.
5. In May 2013, Edna Griswold was a dependent adult as defined by Section 21366 of the California Probate Code.
6. In March 2014, Edna Griswold was a dependent adult as defined by Section 21366 of the California Probate Code.
7. In May 2013, you were a care custodian for Edna Griswold as defined by Section 21362 of the California Probate Code.
8. In March 2014, you were a care custodian for Edna Griswold as defined by Section 21362 of the California Probate Code.
9. There is no certificate by an independent attorney in support of the May 20, 2013 First Amendment to the Edna Griswold Living Trust Dated July 1, 2006.
10. There is no certificate by an independent attorney in support of the March 15, 2014 Second Amendment to the Edna Griswold Living Trust Dated July 1, 2006.
11. Your personal friendship with Edna Griswold arose out of a preexisting professional relationship with her.
13. In September 2012, you started helping Edna Griswold pay her bills.

15. Edna Griswold lacked testamentary capacity when she executed the March 15, 2014 Second Amendment to the Edna Griswold Living Trust Dated July 1, 2006.

16. Edna Griswold compensated you for some of the expenses that you incurred for her care and support.

17. You told Edna Griswold that you wanted to buy her house in Orange from her after she was done with it.

18. During July 2014, pursuant to your authority under the Advanced Health Care Directive dated May 20, 2013, you instructed Edna Griswold's medical providers to withhold life-sustaining measures from her.

19. In the last 10 years, you have attended seminars about the elderly and their finances.

20. When you were present at Edna Griswold's house, you would sometimes listen in on her telephone conversations.

21. Within the last 3 years, you began a practice of reviewing Edna Griswold's incoming mail.

22. Edna Griswold had doubts whether you genuinely cared about her.

23. In May 2013, Edna Griswold depended on you for her daily needs.

24. In March 2014, Edna Griswold depended on you for her daily needs.

25. In May 2013, you hired and oversaw the paid caregivers for Edna Griswold.


27. In May 2013, you took Edna Griswold to her medical appointments.

28. In March 2014, you took Edna Griswold to her medical appointments.

29. In May 2013, you procured Edna Griswold's prescribed medications for her.

30. In March 2014, you procured Edna Griswold's prescribed medications for her.

31. In May 2013, you dispensed Edna Griswold's prescribed medications to her.
32. In March 2014, you dispensed Edna Griswold's prescribed medications to her.
33. In May 2013, you took Edna Griswold to her hair appointments.
34. In March 2014, you took Edna Griswold to her hair appointments.
35. In May 2013, you did the household shopping for Edna Griswold.
36. In March 2014, you did the household shopping for Edna Griswold.
37. In May 2013, you routinely took Edna Griswold on outings.
41. Between November 2012 through July 2014, Edna Griswold compensated you for the services you rendered to her.
42. In May 2013, no other friend or family member of Edna Griswold's was more involved in her care than you.
43. In March 2014, no other friend or family member of Edna Griswold's was more involved in her care than you.
44. You spent Christmas Day of 2012 with Edna Griswold without any of her family members present.
45. You spent Christmas Day of 2013 with Edna Griswold without any of her family members present.
46. In March 2014, you assisted Edna Griswold to liquidate a portion of her Charles Schwab account.
47. You deposited the monies from the March 2014 Charles Schwab account liquidation into a bank account over which you had check signing authority.
48. You used monies from the March 2014 Charles Schwab account liquidation to pay for your own personal expenses.
49. You are not related by blood or marriage to Edna Griswold.
ATTACHMENT 2
TO REQUEST FOR ADMISSIONS
Propounded by Petitioner Candy Johnson
Upon Respondent Melinda Brooks

THE ORIGINAL OF EACH OF THE FOLLOWING DOCUMENTS
COPIES OF WHICH ARE ATTACHED, IS GENUINE:

A. The Edna Griswold Living Trust Dated July 1, 2006
B. The First Amendment to the Edna Griswold Living Trust Dated May 20, 2013
C. The Durable Power of Attorney dated May 20, 2013
E. The Second Amendment to the Edna Griswold Living Trust Dated March 15, 2014
F. Your email to attorney Alice Sutton dated May 10, 2013
G. Your email to attorney Alice Sutton dated March 2, 2014
H. Your letter to Edna Griswold dated December 20, 2013
DECLARATION OF LAURIANN WRIGHT
FOR ADDITIONAL DISCOVERY

I, LAURIANN WRIGHT, do hereby declare as follows:

1. I am an attorney at law duly admitted to practice before all the courts of the State of California. My firm Wright Kim Douglas, ALC is the attorney of record for Candy Johnson, the Petitioner in the Trust Contest pending in this action and the propounding party for the subject written discovery. I have personal knowledge of the facts set forth below, and if I am called upon to testify thereto, I could and would do so competently.

2. I am propounding to the Respondent Melinda Brooks, the attached set of Request for Admissions, Set No. One (1).

3. This set of Requests for Admissions will cause the total number of Requests for Admissions propounded to the party to whom they are directed to exceed the number of Requests for Admissions permitted by paragraph (1) of subdivision (a) of Section 2033.030 of the Code of Civil Procedure.

4. I have previously propounded no other Requests for Admission upon this party.

5. This set of Requests for Admission contains a total of 49 requests - only 14 more requests than provided under the statute.

6. I am familiar with the issues in this action and the previous discovery conducted by all the parties in this case. This is the first discovery by the propounding party in this action. The responding party itself has served substantial discovery on the propounding party including 105 special interrogatories.
7. I have personally examined each of the requests in this set of Requests for Admission.

8. This number of requests is warranted under subdivision (a) of Section 2033.040 of the Code of Civil Procedure because:

(a) the quantity of the existing and potential issues in this particular case involving detailed trust documents and events spanning over 8 years is extensive and the issues themselves are complex;

(b) this matter requires more discovery than normally would be the case to supply essential details and evidence supporting the parties' respective allegations;

(c) the financial burden on the parties entailed by conducting this discovery by oral depositions is great;

(d) this discovery can largely be most cost-effectively conducted by written discovery like the herein Requests for Admissions, which are specifically designed to pare down the disputed issues and to avoid unnecessary litigation of various issues by removing a large volume of foundational facts from controversy; and

(e) this is the most expedient method for the responding party to have an opportunity to conduct an inquiry, investigation, or search files or records to supply the information sought.

///

///
9. None of the requests in this set of Requests for Admission is being propounded for any improper purpose, such as to harass the party, or the attorney for the party, to whom it is directed, or to cause unnecessary delay or a needless increase in the cost of litigation.

    I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Glendale, California on October 1, 2015.

__________________________________________
LAURIANN WRIGHT
APPENDIX 12
In the Matter of:

THE EDNA GRISWOLD LIVING TRUST DATED JULY 1, 2006.

CANDY JOHNSON, 
Petitioner, 

vs. 

MELINDA BROOKS, an individual and as Trustee of the Edna Griswold Living Trust; 

Respondent.

Case No. ________________________

REQUEST FOR PRODUCTION OF DOCUMENTS AND OTHER TANGIBLE THINGS PROPOUNDED UPON RESPONDENT MELINDA BROOKS BY PETITIONER CANDY JOHNSON, SET NO. ONE (1)

PROPOUNDED PARTY : Petitioner Candy Johnson
RESPONDING PARTY : Respondent Melinda Brooks
SET NUMBER : ONE (1)

INTRODUCTORY STATEMENT

Pursuant to Code of Civil Procedure section 2031.010, Petitioner Candy Johnson (the "Propounding Party") submits herein his first demand to produce, inspect and copy documents
upon Respondent Melinda Brooks (the “Responding Party”).

The Propounding Party specifies that the inspection shall take place on November 5, 2014, at 10:00 A.M. at Wright Kim Law, PC, 234 E. Colorado Blvd., Suite 800, Pasadena, California 91101. In lieu of providing the requested documents at the time and date specified above, the Responding Party may forward legible copies of said documents to Propounding Party’s attorneys at any time prior to the date aforementioned. The Propounding Party, however, expressly reserves the right to inspect the originals of the documents produced at any time it deems necessary.

A written response under oath is required of Responding Party within thirty (30) days after service of the herein inspection demand pursuant to CCP § 2031.260 consisting of either a statement that Responding Party will comply with this demand, or a statement that Responding Party will not comply with this demand, or a response that Responding Party lacks the ability to comply with this demand, or an objection to this demand either in its entirety or in some particular respect. If objection is made to only part of an item or category of an item requested in this demand, said response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category.

A statement that Responding Party will comply with this demand shall state that the production and inspection will be allowed either in whole or in part and that all documents or things in the demanded category that are in the possession, custody, or control of the Responding Party and to which no objection is being made will be included in the production.

A representation of inability to comply with any particular item or category of items demanded shall affirm that a diligent search and reasonable inquiry has been made in an effort to comply with the demand and the statement shall also specify whether the inability to comply is because the particular item or category of item, (a) has never existed, (b) has been destroyed, (c) has been lost, misplaced, or stolen, (d) has never been, or is no longer in the possession, custody, or control of Responding Party, as well as the name and address of any natural person or organization known or believed to have possession, custody, or control of that item or category of item.
It is not the intention of Propounding Party to request the production of privileged matter. If any materials requested are claimed to be privileged, please list the following for each item claimed to be privileged:

a. A brief description of the nature and contents of the matter claimed to be privileged;

b. The name, occupation, and capacity of the individual from whom the allegedly privileged matter emanated;

c. The name, occupation, and capacity of the individual to whom the allegedly privileged matter was directed;

d. The date the item bears; and

e. The privilege claimed.

No extensions of time for service of a response or to particular items or categories of items shall be made except as to such agreements which shall be confirmed in writing and signed by the Responding Party or her attorney.

Responding Party is required to produce for inspection and copying documents in the possession, custody, or control of Responding Party, including, but not limited to, those documents in the possession, custody, and control of any attorney Responding Party has retained for representation in this matter.

DEFINITIONS

A. "ADDRESS" shall mean the street number, street name, city, state or province, country (other than United States of America), and zip code, and any other information need to facilitate service of process by the Propounding Party.

B. Whenever the word "ALL" or "ANY" appears, each includes "any and all."

C. Whenever the word "AND" or "OR" appears, each includes the logical inclusive "and/or."

D. Whenever a reference to a business entity – such as a corporation, partnership, or joint venture – appears, the reference means the business entity; its affiliated companies,
partnerships, joint ventures, divisions, subdivisions, directors, officers, employees, agents, or
other present and former representatives; affiliated third parties; and all other persons presently
or formerly acting or purporting to act on its behalf, individually or collectively.

E. "COMMUNICATION" shall mean every manner or means of disclosure, transfer,
or exchange of information, whether orally, by document, or in any other manner or whether
face to face or by telephone, mail, personal delivery, facsimile, electronic mail, or otherwise.

F. "CONCERNING" shall mean referring to, alluding to, responding to, relating to,
connected with, commenting on, in respect of, about, regarding, discussing, showing,
evidencing, describing, mentioning, reflecting, analyzing, and constituting. A document may
concern a certain person or subject without that person being the sole or even significant topic of
that document.

G. "DOCUMENT" shall have the same broad meaning as it has in the Code of Civil
Procedure section 2031 and includes documents, papers, books, accounts, letters, photographs,
objects, tape-recordings, and all other tangible things. It specifically includes all originals,
duplicates, drafts, or other recordings of any written, graphic, or otherwise recorded matter,
however produced or reproduced, whether inscribed by hand or by mechanical, electronic,
microfilm, photographic, phonic, or any other means. It includes abstracts; address books;
advertisements; affidavits or statements; agreements; analyses of any kind; appointment books;
arithmetical blueprints or drawings; balance sheets; bids; billings; blueprints; books or records
of account; brochures; bulletins; calendars; charts; checks and canceled checks; circulars;
compilations; computer cards, runs, and printouts; computer programs and their related data
files; computer tapes and discs; consultants' reports or studies; contracts; correspondence; data
processing input and output; data sheets; desk calendars; diagrams; diaries; digital recordings of
any kind; directories; discs; drawings; electronic mail; estimates; expense account reports;
experst's reports or studies; facsimile transmissions, both outgoing and incoming; financial
statements or calculations; graphs; house publications; income statements; inspection records,
sheets, and reports; interoffice and intra-office communications; invoices; job descriptions or
assignments; journals; layouts; ledgers; letters; licenses; lists; magnetic tapes; manuals; maps;
memorandums of any kind; microfiche; microfilm; minutes or records of any kind; movies;
notations; notes; notebooks; opinions; organizational charts; pamphlets; permits; photographs;
pictures; plans; projections; promotional materials; press releases or clippings; publications;
punch cards; procedures; questionnaires and answers to them; quotations; records and recordings
of any kind; renderings; reports of any kind; rework instructions, orders, and procedures; routing
slips; schedules; sound recordings; specifications; statistical analyses; stenographers' notebooks;
studies of any kind, analyses, forecasts, and evaluations; subcontracts; summaries; surveys;
tables, indices, and lists; tabulations; tallies; tapes; telegrams; telephone messages, telephone
logs, and telephone billings and statements; teletype and telex messages; trade letters;
transcripts, minutes, reports, and recordings of telephone or other conversations, interviews,
conferences, committee meetings, or other meetings; undertakings; video tapes; vouchers; and
working drawings, papers, and files.

H. “EACH” includes “each and every.”

I. “INCLUDES” and its derivatives means “includes, but is not limited to,” and its
derivatives.

J. “PERSON” or “PERSONS” includes individuals, firms, associations, partnerships,
joint ventures, corporations, other business or governmental entities, and all combinations of
them.

K. “YOU” and "YOURS" refer to you, the Responding Party specified above, and to
any of your predecessors or successors in interest; all entities or identities under which you do or
may have done business; any officers, employees, directors, agents, trustees, and representatives;
and all other persons acting or purporting to act on your behalf, individually and collectively.

L. Any pronoun shall mean the masculine, feminine, or neuter gender and the
singular or plural, as in each case may be appropriate.

M. The singular form of a word should be construed either disjunctively or
conjunctively as necessary to bring it within the scope of this demand any document that would
otherwise be within the scope of this demand.
1. All DOCUMENTS identified in YOUR response to Specially Prepared Interrogatory Number 16.

2. All DOCUMENTS identified in YOUR response to Specially Prepared Interrogatory Number 19.

3. All DOCUMENTS identified in YOUR response to Specially Prepared Interrogatory Number 24.

4. All DOCUMENTS identified in YOUR response to Specially Prepared Interrogatory Number 27.

5. All DOCUMENTS CONCERNING YOUR deposition testimony given from 2004 to the present in all other legal proceedings in which YOU have been a party.

6. All DOCUMENTS CONCERNING correspondence, notes, memoranda, contracts, agreements, invoices and documents of any kind from, to, by and/or between YOU and Edna Griswold from January 1, 2011, to the present time.

7. All DOCUMENTS CONCERNING correspondence, notes, memoranda, contracts, agreements, invoices and documents of any kind from, to, by and/or between YOU and any person or entity other than Edna Griswold from January 1, 2011, to the present time relating to the Edna Griswold Living Trust dated July 1, 2006.

8. All DOCUMENTS CONCERNING correspondence, notes, memoranda, contracts, agreements, invoices and documents of any kind from, to, by and/or between YOU and any person or entity other than Edna Griswold from January 1, 2011, to the present time relating to the First Amendment to the Edna Griswold Living Trust dated May 20, 2013.

9. All DOCUMENTS CONCERNING correspondence, notes, memoranda, contracts, agreements, invoices and documents of any kind from, to, by and/or between YOU and any person or entity other than Edna Griswold from January 1, 2011, to the present time relating to the Second Amendment to the Edna Griswold Living Trust dated March 15, 2014.

10. All DOCUMENTS CONCERNING correspondence, notes, memoranda, contracts, agreements, invoices and documents of any kind from, to, by and/or between YOU and John
11. All DOCUMENTS CONCERNING correspondence, notes, memoranda, contracts, agreements, invoices and documents of any kind from, to, by and/or between YOU and Alice Sutton.

12. All DOCUMENTS CONCERNING any correspondence, notes, memoranda, contracts, agreements, invoices and documents of any kind that YOU prepared on Edna Griswold’s behalf from January 1, 2011, to the present time.

13. All DOCUMENTS CONCERNING personal calendars and appointment books referencing meetings and/or telephone conferences which YOU had with any PERSON, including but not limited to Edna Griswold, from January 1, 2011 until the present time relating to the Edna Griswold Living Trust dated July 1, 2006.

14. All DOCUMENTS CONCERNING personal calendars and appointment books referencing meetings and/or telephone conferences which YOU had with any PERSON, including but not limited to Edna Griswold, from January 1, 2011 until the present time relating to the First Amendment to the Edna Griswold Living Trust dated May 20, 2013.

15. All DOCUMENTS CONCERNING personal calendars and appointment books referencing meetings and/or telephone conferences which YOU had with any PERSON, including but not limited to Edna Griswold, from January 1, 2011 until the present time relating to the Second Amendment to the Edna Griswold Living Trust dated March 15, 2014.

16. All DOCUMENTS CONCERNING personal calendars and appointment books referencing meetings and/or telephone conferences which YOU had with Alice Sutton.

17. All DOCUMENTS CONCERNING personal calendars and appointment books referencing meetings and/or telephone conferences which YOU had with John Ellington.

18. All DOCUMENTS CONCERNING personal notes and memoranda made by YOU from January 1, 2011 until the present time relating to the Edna Griswold Living Trust dated July 1, 2006.

19. All DOCUMENTS CONCERNING personal notes and memoranda made by YOU from January 1, 2011 until the present time relating to the assets of the Edna Griswold Living
20. All DOCUMENTS CONCERNING personal notes and memoranda made by YOU from January 1, 2011 until the present time relating to the assets owned by Edna Griswold.

21. All DOCUMENTS CONCERNING monies or other property that you have received from any PERSON upon their death, whether by way of trust, will, pay-on-death-account, life insurance, or similar transfer.

22. All DOCUMENTS CONCERNING the Edna Griswold Living Trust dated July 1, 2006.

23. All DOCUMENTS CONCERNING the First Amendment to the Edna Griswold Living Trust dated May 20, 2013.

24. All DOCUMENTS CONCERNING the Second Amendment to the Edna Griswold Living Trust dated March 15, 2014.


27. All DOCUMENTS CONCERNING the assets of the Edna Griswold Living Trust dated July 1, 2006.

28. All DOCUMENTS CONCERNING the assets of Edna Griswold owned outside of her trust.

29. All DOCUMENTS CONCERNING Edna Griswold's medical conditions, both physical and mental.

30. All DOCUMENTS CONCERNING Edna Griswold's psychiatric conditions.

31. All DOCUMENTS CONCERNING Edna Griswold's professional relationship with YOU from January 1, 2010 until the present time.

32. All DOCUMENTS CONCERNING Edna Griswold's personal relationship with YOU.

///
33. All DOCUMENTS CONCERNING Edna Griswold’s relationship with her family from January 1, 2005 until her death.

34. All DOCUMENTS CONCERNING any transfer of funds from any account owned by the Edna Griswold Living Trust dated July 1, 2006 to any account in which you are an authorized signatory.

35. All DOCUMENTS CONCERNING any transfer of funds from any account owned by Edna Griswold to any account in which you are an authorized signatory.

36. All DOCUMENTS CONCERNING any deposit of monies from any account owned by the Edna Griswold Living Trust dated July 1, 2006 into any account in which YOU are an authorized signatory.

37. All DOCUMENTS CONCERNING any deposit of monies from any account owned by Edna Griswold into any account in which YOU are an authorized signatory.

38. All DOCUMENTS CONCERNING the compensation YOU were paid by Edna Griswold for providing services to her.

39. All DOCUMENTS CONCERNING Edna Griswold’s medical providers during the period beginning November 1, 2011 through the date of her death.

40. All DOCUMENTS CONCERNING Edna Griswold’s paid in-home caregivers during the period beginning November 1, 2011 through the date of her death.

41. All DOCUMENTS CONCERNING any written or recorded statements identified in response to Form Interrogatory number 12.3.

42. All DOCUMENTS CONCERNING any reports identified in response to Form Interrogatory number 12.6.

43. All DOCUMENTS CONCERNING any reports identified in response to Form Interrogatory number 15.1(c).

44. All DOCUMENTS that YOU identified in YOUR response to Form Interrogatory number 17.1(d).

45. All DOCUMENTS CONCERNING YOUR acts and transactions with regard to the Edna Griswold Living Trust Dated July 1, 2006.
46. All DOCUMENTS CONCERNING ANY accountings YOU prepared with regard to the Edna Griswold Living Trust Dated July 1, 2006.

Dated: October 1, 2015

Respectfully submitted:

WRIGHT KIM DOUGLAS, ALC

By: ____________________________

Lauriann Wright
Attorneys for Petitioner Candy Johnson
APPENDIX 13
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

In the Matter of:

THE EDNA GRISWOLD LIVING TRUST DATED JULY 1, 2006.

CANDY JOHNSON,

Petitioner,

vs.

MELINDA BROOKS, an individual and as Trustee of the Edna Griswold Living Trust;

Respondent.

Case No. __________________________

STIPULATION AND ORDER RE: PROTECTIVE ORDER FOR FINANCIAL RECORDS PRODUCED BY FINANCIAL INSTITUTION BROKERAGE SERVICES, LLC

Dept:
Judge:

STIPULATION

1. The Petitioner has propounded Deposition Subpoenas For Production Of Business Records upon Financial Institution Brokerage Services, LLC on September 22, 2015.

2. Third Party, a relative of Respondent Litigation Party, maintains accounts at Financial Institution Brokerage Services, LLC, and on September 17, 2014, served a written objection to said Subpoena based upon his respective rights to financial privacy. At the time of service of his written objection, Third Party was not a party to any of the actions identified
above.

3. Section 1985.3(g) of the Code of Civil Procedure establishes that: "No witness or deposition officer shall be required to produce personal records after receipt of notice that the motion has been brought by a consumer, or after receipt of a written objection from a nonparty consumer, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected. The party requesting a consumer's personal records may bring a motion under Section 1987.1 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the personal records and the consumer or the consumer's attorney."

4. Petitioner did not bring any motion under Section 1987.1 to enforce said Subpoena within the statutory 20 day period following service of Third Party's written objections to said Subpoena.

Based upon the foregoing recitals, **THE PARTIES HEREBY STIPULATE** that:

A. Third Party will agree to allow production by Financial Institution Brokerage Services, LLC of any responsive documents which would otherwise be blocked by his previously-served written objection, subject to the following terms and conditions:

1. Any documents so produced shall be marked "Confidential";

2. Petitioner agrees that any documents so produced and marked shall be for Attorney's and Expert's Eyes Only, and not subject to disclosure to any other individuals, excepting only Petitioner's attorney's office staff and any retained experts as needed for litigation;

3. Petitioner agrees that any documents so produced and marked shall be limited to use in the above-entitled actions only;

4. Petitioner agrees that any documents so produced and marked may be used as exhibits only if submitted under seal for review by the Court and not included in the public record;
5. Petitioner agrees that any documents so obtained shall be returned to counsel for Third Party upon the termination of the above-entitled actions; and

6. The terms and conditions of this Stipulation shall apply only to documents produced by Financial Institution Brokerage Services, LLC in response to the September 22, 2015 Subpoena.

B. Upon the full execution of this Stipulation, counsel for Respondent shall notify Financial Institution Brokerage Services, LLC of this agreement, authorize production of all responsive documents currently subject to the previous written objection, and provide Financial Institution Brokerage Services, LLC with a fully executed copy hereof.

C. The parties further stipulate that a copy of a signature to this Stipulation shall have the same force and effect as an original signature.

**IT IS SO STIPULATED:**

Dated: ________________, 2015
By: __________________________
Attorney for Petitioner

Dated: ________________, 2015
By: __________________________
Attorney for Respondent

Dated: ________________, 2015
By: __________________________
Attorney for Third Party

**ORDER**

**IT IS SO ORDERED:**

Dated: __________________________

Judge of the Superior Court
APPENDIX 14
Trial Deadlines

For: ______________________ v. ______________________

LASC Case No. ______________________, _______ District

Judge: ______________________ in Dept. _____

Initial Trial Date: ______________________  Current Trial Date: ______________________

Final Status Conf. Date: ______________________  MSC Date: ______________________
Per Rule 3.25(f), not more than 10 days before trial  [See CRC 3.1380 et seq. for all MSC-related deadlines]

NOTE: Courts are expressly authorized to set their own pre-trial deadlines under Local Rule 3.24(c); these may supplant some of the deadlines set forth below. Be sure to check for any department-specific trial related deadlines.

ALSO NOTE: In probate trials, a FSC is typically not set. Accordingly, set all FSC-related deadlines according to the trial date (i.e. as if motion to be heard on first day of trial). Also, the LASC probate court has a strict Mandatory Joint Trial Statement policy, whose deadlines will be set forth below. A copy of the Court’s written policy is saved as a pdf file under Forms & Text/ Probate.

Calendar Item Nos. 3-14 and all dates from above.

1. Date Complaint filed: ______________________

2. Five Years After Complaint filed: ______________________
   a. Plaintiff must bring case to trial or else dismissed: CCP §583.310

3. CMC Date: ______________________
   a. CMC Statement Deadline (15 days before CMC) ______________________
      Cal. Rule of Ct. 3.725(a)
   b. Post Jury Fees before CMC date per C.C.P. §631(b) (not to exceed $150 per party)

4. 110 Days Before Trial: ______________________
   a. File and Serve Motions for Summary Judgment
   b. Hearing 30 days before trial + 75 days notice + 5 for mail service per CCP §437c(a)
5. **70 Days Before Trial:** ................................................
   
   a. Service of **Demand for Exchange of Expert Witness Information**
   
   b. **10 days after initial trial date set OR NO LATER THAN 70 days before initial trial date,** whichever is closer to trial date per CCP 2034.220. (**Note: This deadline cannot be extended to next business day if last day falls on holiday or weekend**)

6. **65 Days Before Trial:** ................................................
   
   a. Serve Last Discovery Requests
      
      i. **Discovery Cut-Off** 30 days before initial trial date + 35 days for mail service CCP § 2024.020(a)
      
   b. Serve Last Supplemental Interrogatory:
      
      i. Stating "Please review your answers to interrogatories previously served on you in this action and if, for any reason, any answer is no longer correct and complete, identify the answer and state whatever information is necessary to make it correct and complete as of this date."
      
      ii. **Twice prior to setting of initial trial date and once after setting of initial trial date per CCP §2030.070(b).**

7. **50 Days Before Trial:** ................................................
   
   a. Service of **Exchange of Expert Witness Information**
      
   b. **50 days before initial trial date OR 20 days after service of demand,** whichever is closer to trial date per CCP 2034.230(b).

8. **About 45 Days Before Trial (Formula below):** ....................
   
   a. File and serve any final motions (non-pretrial) to be heard before Motion Cut-Off date
      
   b. **From trial date, subtract: 16 court days notice (CCP §1005(b)) + 5 for mail service + 15 days for Motion Cut-Off.**

9. **10 Days Before Date in #10 Below:** ..............................
   
   a. **Meet and Confer** on any Motions in Limine
      
   b. **Required by LASC Local Rule 3.57(a), but no deadline set; motions in limine must be filed 16 court days + 5 days for mail service (same as any other motion under CCP §1005) before FSC, so meet and confer 10 days before to give opposing counsel time to**
consider the matter.

10. 16 Court Days + 5 Days for Mailing Before FSC: ..............................................

   a. File and serve all Trial Preparation and Dispositive Motions, including motions in limine or bifurcation motion

   b. 16 court days for motion + 5 for mail before FSC per Local Rule 3.25(f)(1) (timely statutory notice for hearing at FSC)

11. 30 Days Before Trial: ..............................................................

   a. Discovery Cut-Off per CCP §2024.020

   b. Hearing on Motions for Summary Judgment per CCP §437c(a)

   c. [IN LASC PROBATE TRIALS, deadline to meet & confer re: Joint Trial Statement preparation]

12. 25 Days Before Trial: ..............................................................

   a. Post Jury Fees per CCP 631(b): this later deadline is only for parties who have not appeared before the initial case management conference, or first appeared more than 365 calendar days after the filing of the initial complaint. Calculated based on initial trial date.

   b. Serve Opposing Party with Notice to Produce Documents at Trial
      
      i. 20 days before trial (+ 5 for mail) per CCP 1987(c)

13. 15 Days Before Trial: ..............................................................

   a. Motion Cut-Off per CCP §2024.020(a).

   b. Expert Witness Depositions per CCP §2024.030

   c. Offer to Compromise under CCP §998
      
      i. At least 10 days before trial (+ 5 for mail) per CCP 998(b)

   d. Serve Opposing Party with Notice to Appear at Trial
      
      i. At least 10 days before trial +5 for mail per CCP 1987(b)
14. **5 Days Before Final Status Conference:**
   
a. Exchange and file Trial Docs:
   
i. Exhibit List
   ii. Witness List
   iii. Jury Instruction Requests (BAJIs by list only and Specials in full text w/ authorities)
   iv. Proposed short Statement of the Case to read to jury panel.

b. Per Local Rule 3.25(f)(1)

15. **10 Days Before Trial:**
   
a. **Expert Witness-Related Motions** per CCP §2024.030

b. Serve **Subpoenas** on Non-parties
   
i. *Reasonable amt of time b4 trial (10 days a rule of thumb) per CCP §1987(a)*

b. [IN LASC PROBATE TRIALS, deadline to **file Joint Trial Statement** directly with the department]

16. **FINAL STATUS CONFERENCE:**
   
a. Court to address “major evidentiary issues and special verdict issues.”

b. Motions in Limine/ Bifurcate heard.

17. **TRIAL DATE:**
   
a. File and serve:
   
i. Trial Brief (court trials only)
   ii. Juror Questionnaires
   iii. Requests for Judge to Ask Specific Questions (Local Rule 8.20(h)

b. Also have ready:
   
i. Voir Dire areas
   ii. Any requested Pre-Instructions
   iii. Jury Box Chart
   iv. Opening Statement Outline
   v. Blank CCP §170.6 affidavit
18. **TRIAL CONFERENCE:** *Before panel of prospective jurors is summoned*

For jury trials, following issues must be addressed per LASC Local Rule 3.48:

(a) Voir Dire Examination areas and possible preinstruction,
(b) Statement of the Case reviewed,
(c) Less than 12 jurors stipulation,
(d) Number of Alternate Jurors,
(e) Stipulation to Excuse Jurors for long trial,
(f) Determination of Sides and Allocation of Peremptory Challenges,
(g) Sign basic stipulations,
(h) Requests for Judge to Ask Specific Questions, and
(i) any Other Trial Matters.

19. **BEFORE FINAL ARGUMENT:**

a. **Requests for Special Findings by Jury:** in writing, the issues or questions of fact upon which such findings are requested, in proper form for submission to the jury, & serve on all parties; per CRC 3.1580

b. **Printed Jury Instructions & Proposed Verdict:** per LASC Local Rule 3.172

c. **Jury Instruction Meet & Confer Meeting:** Counsel must meet to discuss all jury instructions, verdict and finding forms per Local Rule 3.172

d. **Jury Instruction Conference:** Court discusses: (LASC Local Rule 3.172)
   i. Whether any requested proposed instructions, verdicts, or findings are patently inappropriate and will be voluntarily withdrawn
   ii. Whether there are instructions, verdicts, or findings which are appropriate and may be given without objection; and
   iii. Whether there is any other modification to which the parties will stipulate.

*
APPENDIX 15
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APPENDIX 16
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES  

CHAPTER FOUR  
PROBATE DIVISION RULES  

RULE 4.15  
TRIAL ON CONTESTED MATTERS IN CENTRAL DISTRICT  

(a) Trial Setting. A contested matter will be set for trial. Counsel are required to provide the court with reasonable and accurate time estimates for trial. If the time estimate of either party is exceeded, the court may, in its discretion, deem the case submitted, declare a mistrial, or continue the matter to a new trial date.

(b) Joint Trial Statement.

(1) Meet and Confer. No later than thirty calendar days before the date set for trial, counsel must meet and confer, in person, in good faith to prepare a Joint Trial Statement. Although the petitioner has the duty to initiate the meet and confer process, the responding party(ies) must initiate it if the petitioner fails to timely do so. Both counsel are subject to imposition of monetary and/or other appropriate sanctions if the meet and confer process is not completed.

(2) Filing Joint Statement. The Joint Trial Statement must be filed directly with the clerk of the department where the matter is pending and served on all parties no later than ten calendar days before the trial date.

(3) Filing Separate Statement. In the rare case where the parties, after good faith attempts to do so, are unable to agree on a Joint Trial Statement, each party shall file directly with the clerk of the department where the matter is pending, and serve on all other parties, a Separate Trial Statement no later than ten calendar days before the trial date.

(4) Extension of Time. Compliance may be extended only by order of the court.

(c) Contents of Joint Trial Statement. The Joint Trial Statement or Separate Trial Statement must contain the following:

(1) Joint Statement Compliance. If the parties have failed to prepare and file a Joint Trial Statement, the Separate Trial Statement must summarize attempted compliance activity, including dates of meetings or discussions and total time spent in attempts to reach compliance;
(2) Expedited Presentation of the Case. The Statement must address in detail the use of summaries or statements, or other expedited means of presenting evidence including stipulated facts, agreements regarding admission of evidence, and agreements re summary of testimony;

(3) Factual Information. The Statement must include a complete and objective factual statement of the case including, as applicable

a) the date of decedent’s death and date of any wills or codicils,
b) the date of appointment of personal representative/guardian/conservator,
c) the names, ages and relationships of all persons relevant to the proceeding and names of counsel,
d) the date and substance of any prior orders of the court,
e) the filing date and substance of any documents pertinent to any contested issue (e.g., inventories),
f) the amount of any bond, and

g) other relevant information.

(4) Uncontested Issues. The Statement must list and summarize all uncontested issues.

(5) Statement of Contested Issues. The Statement must include a concise statement of every contested issue. If the parties cannot agree on what the contested issues are, each issue must be noted with an identification of which party believes the issue to be contested and which party does not.

(6) Discussion of Contested Issues. For each contested issue, the Statement must present a brief but comprehensive discussion which includes the following:

a) Any factors relevant to that issue;

b) A list of all documents, schedules, or summaries to be offered at trial regarding the issue, a summary of each document’s content and purpose, and a copy of each appraisal and expert report to be offered at trial;

c) For each percipient or expert witness that any party intends to call at trial, the witness’ name and business address, a brief statement of the substance of the witness’ testimony, and a time estimate for direct and cross-examination. This provision does not apply to any witness objectively and in good faith anticipated to be called solely for the purpose of impeachment; and

d) Any points and authorities relevant to a particular contested issue.
(d) **Continuance.** A trial may be continued for good cause only by order of the court. If all parties waive notice, an application for continuance may be presented ex parte. The application must be made at the earliest possible time and in no event less than one week prior to trial. A party’s need for additional time to prepare for trial or to discuss settlement does not constitute good cause.

(e) **Motions in Limine.** Motions in limine must comply with the notice provisions of Code of Civil Procedure section 1005 and must be set for hearing no later than the first day of trial.

TRUST CONTEST STRATEGIES

Los Angeles County Bar Assoc.
Trust & Estates Section
September Symposium
September 25, 2015 – Noon
Millennium Biltmore Hotel

Speakers:
Lauriann Wright & Robert Eroen
THE TRUST
CONTEST
PLEADING
Pre-Contest

Attention to your “pre-drafting” checklist will ensure efficient, streamlined case management

• Calendar important dates, including 120 / 60 day contest deadline (PC §16061.7)
• Discuss no-contest clause with client before filing contest
• Obtain complete trust terms, read Trust carefully and prepare a memo of key trust terms
• Timeline (Appendix 2)
• Investigation, including background checks of parties

• Sample Petition at Appendix 3. Based on Hypo from Appendix 1.
Drafting the Petition

**Relief to Include, Overview**

1. Trust Contest
2. 850 Claims
3. Accounting / Request for Information
4. Removal / Suspension
5. Intentional Interference with Right to Inherit
6. Contract to Make a Will
7. Elder Abuse
#1: Trust Contest

- Grounds most typically alleged to invalidate a trust:
  - Lack of Capacity
  - Undue Influence
  - Fraud
  - Duress / Menace
  - Mistake
  - Disqualified Donees –Drafters, Caregivers & Others
Lack of Capacity

• For *Trust Contests*, sliding scale for capacity
    • Where a trust amendment resembles will or codicil, testamentary capacity is proper standard
    • Where trust or amendment more complex, testamentary capacity does not apply; rather, the sliding-scale contractual capacity of PC 810-812 (*Lintz v. Lintz* (2014) 222 CA4th 1346)
Undue Influence

• New PC 86, incorporating WIC 15610.70(a): Excessive persuasion that overcomes another’s free will causing action / inaction resulting in inquity

• Evidentiary factors to consider:
  • Vulnerability of victim
  • Influencers apparent authority
  • Actions or tactics used
  • Equity of result (but not only factor)
Practice Pointer

• At outset of matter, be cognizant of capacity issues
• Obtain / subpoena medical records as early as possible – consider having records summarized
• Retain and consult with expert (geriatric psychiatrist / psychologist) early
21380, Disqualified Donees

6 Categories –

(a) *The person who drafted the instrument.
(b) A person in a fiduciary relationship with the transferor who transcribed the instrument or caused it to be transcribed.
(c) A care custodian of a transferor who is a dependent adult, but only if the instrument was executed during the period in which the care custodian provided services to the transferor, or within 90 days before or after that period.
(d) A person who is related by blood or affinity, within the third degree, to any person described in (a), (b), or (c), inclusive.
(e) A cohabitant or employee of any person described in (a) to (c), inclusive.
(f) A partner, shareholder, or employee of a law firm in which a person described in the statute has an ownership interest.
Exceptions

1. Related to donor within the 4th degree
2. Instrument drafted or transcribed by relative (4th degree)
3. Instrument approved by Court under PC 2580
4. Transfer to government agency
5. Transfer of $5,000 or less if estate exceeds $150,000
6. Instrument executed outside CA by donor who not resident of CA when executed
7. Reviewed by independent attorney who signs CIR

"Independent attorney" means an attorney who has no legal, business, financial, professional, or personal relationship with the beneficiary of a donative transfer at issue under this part, and who would not be appointed as a fiduciary or receive any pecuniary benefit as a result of the operation of the instrument containing the donative transfer at issue under this part.
Rebutting the Presumption

• Presumption established by §21380 affects the burden of proof. May be rebutted by clear and convincing evidence that the transfer was not the product of fraud or undue influence.

• *With respect to a donative transfer to the person who drafted the donative instrument, or to a person related to, or associated with, the drafter as under (d), (e), or (f) the presumption created by this section is **conclusive and cannot be rebutted**.

• If a beneficiary is unsuccessful in rebutting the presumption, he/she shall bear all costs of the proceeding, **including reasonable attorney’s fees**.
#2: 850 Claims

- Do you have enough evidence to bring at outset or will you need discovery first?

- 850 is a mechanism to bring underlying civil claims in Probate Court. *Estate of Young (2008) 160 Cal.App.4th 62, 86*
  - 850 issue is whether trustee has a claim to property in possession of another
  - Action can include factually-related civil claims

- And why do we all love 850 Claims? 850 Double Damages, of course! And Court has discretion to award attorney’s fees and costs. “Person has in bad faith wrongfully taken, concealed, or disposed of property . . .”
SOL on 850 Claims

• *Estate of Yool (2007) 151 Cal.App.4th 867*
  
  • CCP 366.2, 1-Year SOL does not apply; it only applies to liability of a PERSON
  
  • A claim to title to property is not liability of a person
  
  • PC 9000 defines “claim” for purposes of creditor’s claim and excludes any dispute over a decedent’s title to real property

And don’t forget PC § 259 – person deemed predeceased if found by clear and convincing evidence to have committed elder financial abuse, fraudulently and in bad faith.
Conversion, 3rd Party Liability

• Money may be the subject of a conversion action only when the money can be described or identified as specific property, since conversion deals with interference with property. *Shahood v. Cavin* (1957) 154 Cal.App.2d 745, 748. While money must be in a specific sum capable of identification, it is not necessary that each coin or bill be earmarked; it is sufficient if a definite sum is involved. *Haigler v. Donnelly* (1941) 18 Cal.2d 674, 681; *Weiss v. Marcus*, 51 Cal.App.3d 590, 599.

• With respect to third parties, unless one is an innocent purchaser for value and without notice, one who accepts goods from a fraudulent possessor is also liable for conversion. *Oakdale Village Group v. Fong* (1996) 43 Cal.App.4th 539, 549.

• NOTE: Cannot sue for conversion of real property.
Elements of Conversion

• “Conversion is generally described as the wrongful exercise of dominion over the personal property of another. (Gruber v. Pacific States Sav. & Loan Co. (1939) 13 Cal.2d 144, 148) The basic elements of the tort are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages. (Burlesci v. Petersen (1998) 68 Cal.App.4th 1062, 1066.)” Fremont Indem. Co. v. Fremont Gen. Corp. (2007) 148 Cal. App. 4th 97, 119.

• **WATCH OUT:** The recent Jenkins v. Teegarden (2014) 230 Cal.App.4th 1128, 1142-43 case defined “donative transfer” for purposes of the former Probate Code §21350 as not only a transfer for zero consideration, but also a transfer for unfair or inadequate consideration under the circumstances.
#3: Accounting / Request for Information

- Just in case clients found not to have right to an accounting per se, also demand Trust Information from Trustee. PC 16060-16061.

- Can sue Respondent as a **de facto trustee**. If a person, by mistake or otherwise, assumes the character of a trustee and acts as such when the office does not belong to him, he becomes a trustee *de son tort* and may be called upon to account for assets received under the color of the trust. *England v. Winslow* (1925) 196 Cal. 260, 267. During the possession and management by such individuals, they are subject to the same rules and remedies as other trustees. *Id.* at 268.

- Consider bifurcating issue of start date of accounting; common dispute.
Standing to Sue for Surcharge

- Accounting may reveal basis for surcharge of Trustee.

- Under *Estate of Giraldin* (2012) 55 Cal.4th 1058, after the settlor of a revocable dies, the beneficiaries have standing to sue for breaches of fiduciary duty committed while settlor was alive and trust was revocable.

- **WATCH OUT** for *Drake v. Pinkham* (2013) 217 Cal.App.4th 400, a recent LACHES case:
  - If Settlor is incompetent and no one holds power to revoke, then remainder beneficiaries could be barred by laches if they do not bring action for breach of fiduciary duty.
#4: **Removal / Suspension**

- Seek immediate suspension and appointment of temporary trustee. PC 17206, 15642(e)

- **STRATEGY:** do you name a specific neutral PPF or just ask for one generally? Other side will always object to anyone you name in petition.

- ALTERNATIVELY ask that all assets be frozen except a small amount for routine trust expenses EXCLUDING Trustee and Attorney Fees.

- Be sure to include legal description of any real property so you can record interim order.
Strategy/ Sidenote

• Ask Temporary Trustee to demand all communications between prior trustee and his counsel.

• Successor Trustee is entitled to all attorney-client privileged communications of predecessor trustee. The attorney-client privilege follows of office of trustee. *Moeller v. Superior Court of Los Angeles County* (1997) 16 Cal. 4th 1124, 1139.
#5: Intentional Interference with Right to Inherit

- Recently recognized as a valid tort cause of action in California.

- *Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039: A court should recognize the tort of IIEI if it is necessary to afford an injured plaintiff a remedy because no adequate probate remedy exists. E.g. where Decedent promised to leave Plaintiff something in a Will but Defendant intentionally interfered by stopping the Decedent from making the will.
Elements of IIRI

1. Expectation of inheritance
2. Intentional interference with expectancy by a third party
3. Interference was independently wrongful conduct
4. Reasonable certainty that, but for interference, inheritance would be received
5. Damages
#6: Contract to Make a Will

PC 21700(a) governs: “A contract to make a will or devise or other instrument, or not to revoke a will or devise or other instrument, or to die intestate, if made after the effective date of this statute, can be established only by one of the following:

1. Provisions of a will or other instrument stating the material provisions of the contract.
2. An expressed reference in a will or other instrument to a contract and extrinsic evidence proving the terms of the contract.
3. A writing signed by the decedent evidencing the contract.
4. Clear and convincing evidence of an agreement between the decedent and the claimant or a promise by the decedent to the claimant that is enforceable in equity.
5. Clear and convincing evidence of an agreement between the decedent and another person for the benefit of the claimant or a promise by the decedent to another person for the benefit of the claimant that is enforceable in equity.”
#7: Elder Abuse

- Allege that actions taken during Settlor’s life amount to elder financial abuse and allege recovery of attorney’s fees pursuant to Welfare & Institutions Code §15657.5.

DISCOVERY & INVESTIGATION
Working with Law Enforcement

• Is there an investigation or referral to DA pending? If no, have your client call and try to start one.

• Is there an investigation pending with any licensing authority like FINRA?

• Can you stall your civil action while criminal proceedings pending? Part of plea deal may be disclaimer of any interest in Trust or civil restitution. Could make probate litigation unnecessary.
Common Interest Agreements


• **Attorney-Client Privilege:** EC 912 – Still protected by privilege “... when disclosure is reasonably necessary for the accomplishment of the purpose for which lawyer . . . was consulted . . .” *Oxy Resources California, LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 890.

• Privilege extends to communications intended to be confidential if they are made to attorneys, family members, business associates, or agents of the party or his attorneys on matters of joint concern, when disclosure reasonably necessary to further interests of litigant.
• EC 954, defines confidential communication and acknowledges that information transmitted between a client and lawyer retains privileged character if transmitted in confidence “to no third persons other than those who are present to further the interests of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer was consulted.”

• **Work Product Privilege:** No statutory provision addressing waiver of work product privilege, but CA courts have recognized that Waiver Doctrine also applies to it. *Oxy Resources California, LLC (2004) 115 Cal.App.4th 874, 891.*

• The work product protection is not waived **except** by a disclosure wholly inconsistent with the purpose of the privilege, which is to safeguard the attorney’s work product and trial preparation. *Id.*
Take-Aways

• Always mark communications with/including non-clients “CONFIDENTIAL” to make intent clear.

• Enter into a COMMON INTEREST AGREEMENT with other parties/attorneys you are working with. Sample at Appendix 4.
Forthmann Rule

• **Forthmann v. Boyer** (2002) 97 Cal.App.4th 977, 985. There is no right to conduct formal discovery before written objections are filed.
  
  • “We therefore are satisfied, and do expressly hold, that the filing of a formal objection or response is a necessary predicate to the conduct of any discovery with respect to the trustee's interim accounting. Absent an objection or response, even if made only on information and belief, there is no issue joined by which the relevancy of any proposed discovery may be judged.”

• **Mota v. Superior Court** (2007) 156 Cal.App.4th 351, 356:
  
  • “A corollary of the Forthmann rule is that a beneficiary, having filed formal objections to a trustee's petition, may conduct discovery relevant to those objections.”
PC 8870, Discovery of Decedent’s Property

APPLIES TO ESTATES. Court may authorize issuance of Citation to a person to “... answer interrogatories, or to appear before the court and be examined under oath, or both, concerning any of the following allegations:

(1) The person has wrongfully taken, concealed, or disposed of property in the estate of the decedent.

(2) The person has knowledge or possession of any of the following:
   (A) A deed, conveyance, bond, contract, or other writing that contains evidence of or tends to disclose the right, title, interest, or claim of the decedent to property.
   (B) A claim of the decedent.
   (C) A lost will of the decedent.”
Subpoenas

• **WHO TO SUBPOENA**, Samples of each type at Appendix 8
  - Estate Planning Attorneys
  - Medical Records
  - Financial Records

• **No Attorney-Client Privilege** for communications relevant to an issue:
  (ii) Concerning intention or competence of a client executing an attested document of which lawyer is an attesting witness or concerning the execution or attestation of such document. *Ev. Code §959.*
  (iii) Concerning the intention of a deceased client with respect to a deed of conveyance, will, or other writing executed by the client purporting to affect an interest in property. *Ev. Code §960.*
  (iv) Concerning the validity of a deed of conveyance, will, or other writing executed by a deceased client purporting to affect an interest in property. *Ev. Code §961.*

• Sample demand letter to EP Attorney re waiver at Appendix 5.
Other Ideas for Subpoenas

- Any licensing agencies
- Friends, family members for personal correspondence
- Church, clubs, associations
- Law enforcement reports

See Appendix 6 for Memo re: Records Only Subpoenas

See Appendix 7 for Sample Instructions & Custodian of Records Declaration to include with Subpoena packets to third parties.
Right to Financial Privacy

• Court applies a balancing test to this Constitutional, inalienable right.

• Covers:
  • Confidential financial affairs;
  • “Confidential customer information whatever form it takes, whether that form be tax returns, checks, statements or other account information.” Fortunato v. Superior Ct. (2003) 114 Cal.App.4th 475, 480.
Balancing Test

Courts “indulge in a careful balancing of the right of civil litigants to discover relevant facts, on the one hand, with the right of bank customers to maintain reasonable privacy regarding their financial affairs, on the other.” *Valley Bank* at 657. When compelled disclosure intrudes on constitutionally protected areas, it cannot be justified solely on the ground that it may lead to relevant information; rather, the compelled disclosure must be directly relevant. *Board of Trustees of Leland Stanford Junior University v. Superior Ct.* (1981) 119 Cal.App.3d 516, 525. And even when discovery of private information is found directly relevant to the issues of ongoing litigation, it will not be automatically allowed; there must then be a “careful balancing” or the “compelling public need” for discovery against the “fundamental right of privacy.” *Id.*
Solutions

• **Attorney and Expert Eyes Only Protective Order.** Sample provided at [APPENDIX 13](#).

• Another option is a stipulation limiting the extent of the information produced - e.g., just the date and amount of transactions, or details regarding transactions only with certain specifically identified entities, etc.
Written Discovery

• Pages 16-25 of your written materials covers, in detail, all four types of written discovery.

• Samples of each type at Appendixes 9-12
Private Investigators

• Preserves the credibility of the witnesses. Avoid letting your client interview potential witnesses! Respondent will try to impeach them at trial and argue that your client influenced them.

• Avoid interviewing witnesses yourself! It could put you in the awkward position of having to testify at trial as to what the witness said to you in the event they change their story at trial.

• You will get detailed summaries of what each witness would testify to at trial. You can use those summaries to decide which witness depositions to take.

• Private Investigator rates are MUCH LOWER than attorney rates. Your client will save money if an investigator interviews witnesses instead of you.
Application of Work Product Privilege

- Extends not only to the attorney’s work product, but also to the efforts of those who work with him to prepare the case. See e.g., City of Los Angeles v. Superior Court (1985) 170 Cal.App.3d 744, 754.

- However, the work product privilege concerning an investigator’s report ceases the moment it is determined to use him as a witness, just as it does with the report of an expert. Mize v. Atcheson, T. & S.F. Ry. Co. (1975) 46 Cal.App.3d 436, 449.
Who To Interview

• Other Relatives
• Neighbors
• Friends
• Bank tellers
• Accountant
• Investments advisors
• Treating physicians/ medical providers
• Caregivers
Consultants/ Experts

• Types Typically needed:

#1: GERIATRIC PSYCHIATRIST OR PSYCHOLOGIST to apply PC 811 filter to medical records.

#2: FORENSIC ACCOUNTANT for any 850 claims to trace stolen monies to Respondent

#3: FORENSIC DOCUMENT EXAMINER for any forgery claims
Retaining the Expert

- Hire as a consultant first; designate as a expert only if conclusions are in your favor.

- BE SURE the Retainer Agreement is between YOU, the attorney, and the expert so that Work Product Privilege attaches! *County of Los Angeles v. Superior Court* (1990) 222 Cal.App.3d 647, 654.

- HOWEVER, keep in mind, once you designate your consultant as your expert, her entire files are discoverable by opposing counsel. *Id.* (Be careful what you put into writing with your expert!)

- Hire your experts early.
Depositions

• New 7-Hour Rule CCP 2025.290(a). Motion required for more time.

• Timing concerns

• Expert assistance in question preparation

• Always keep a copy of *Rifkind v. Superior Court (Good) (1994) 22 Cal. App. 4th 1255* with you -- holds that contention questions cannot be asked at a deposition of a party represented by counsel; must be asked via a written interrogatory.

• Give clients DVD or link to deposition preparation video
PRETRIAL DEADLINES
Trial Date Priority

• Party over 70 years old or suffering from a condition that raises doubt as to their survival within 6 months, can bring a Motion for Trial Preference under Code of Civ. Proc. §36. Court must make following findings:

  • The party has a substantial interest in the action as a whole.

  • The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation.

• If granted, trial shall be set not more than 120 days from the date motion granted.
Calculating Trial Deadlines

• Calculation Sheet at Appendix 14

• Probate Trials typically do not have FSCs, so calculate all deadlines according to Trial Date.

• Unique to LASC trials, Joint Trial Statement requirement. See Appendix 16 for text of Local Rule.
The End!

I keep lots of family photos on display. It’s easier to describe them to the police that way.