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Probate / Wills and Trusts Case Summaries

Much of Ms. Callahan’s experience as a mediator, arbitrator, and attorney advocate has involved the resolution of 1. competing interests in real and personal property as a matter of law or contract, 2. accounting for how assets have been administered, utilized or disposed of, and 3. valuing assets for purposes of division and distribution. Some of those disputes have involved probate estates and trusts, disputes concerning the validity or interpretation of wills and trusts instruments, inheritance rights and alleged financial elder abuse. The following are a few examples:

Trustee Accounting & Competing Instruments (Arbitrator). Ms. Callahan was a co-Arbitrator in a wills and trust dispute requiring the interpretation of the trust instrument and the legal effect and validity of a later will executed by the decedent on the eve of his death. The trust instrument (a living will and trust) had been put in place 20 years prior by decedent and Wife No. 2, and provided for the half of the estate to go to Wife No. 2 upon Husband’s death, with the other half going into an irrevocable decedent’s trust. While the assets in the decedent’s trust would pass to his children (from marriage to Wife No. 1), the trust required that the assets remain in trust until the death of Wife No. 2 and provided that she would receive all of the income during her lifetime. The later will was drafted by decedent’s children and executed by decedent shortly before his death. It provided for specific gifts to decedent’s children upon his death. In addition to the competing instruments dispute, this case also required the resolution of numerous disputes in which the parties had engaged in various means of “self-help.” For example, exercising her powers as successor trustee, Wife No. 2 liquidated a number of trust assets worth several million dollars and transferred them into a new trust in which she and her daughter were co-trustees.

Undue Influence / Enforceability of Amended Will & Trust (Mediator). “Mom” had two children. Her original estate plan of many years treated her children equally. About 3 years before her death, Mom changed her estate plan so that her son was preferred over her daughter by making a specific gift to her son of a high-value residential property located in Orange County (valued about \$2 million with a basis of about \$250,000) and inheritance from a Family Trust that paid an annual distribution based upon stocks and other investment holdings. The new will provided that what was left (a small rental property worth about \$200,000 and Mom’s personal

possessions) was to be divided equally between brother and sister. Sister sued, challenging the validity of the new will, which she alleged was the product of undue influence by her brother. This matter was resolved at mediation.

Breach of Trust / Undue Influence / Enforceability of Will & Trust Amended Numerous Times (Mediator). “Dad” had two children with “Wife No. 1.” Early on in their marriage, Dad and Wife No. 1 executed standard “living trust” documents that provided for community assets to be divided into an A (Survivor’s) and B (Decedent’s) trust upon death of the first spouse. The surviving spouse was free to do what he/she wanted with his/her share of the community estate, but was only entitled to income from the assets held in the decedent’s trust, unless invasion of principal was necessary to maintain his/her accustomed standard of living. Wife No. 1 died of a sudden illness when she was in her mid-40’s. The community assets in existence at the time of Wife No. 1’s death consisted of a mixture of assets worth about \$2 million. After Wife No. 1 died, Dad did not divide the community assets into an A and B trust, and continued to treat them as his own. He did this for 35 years. His “treatment” of community assets included liquidating various assets – including the “family home.” Ten years after the death of Wife No. 1, Dad met and married Wife No. 2. She was a working professional and had her own income, savings and retirement. Five years into the marriage, they bought a new home together, which they titled as joint tenants. Twenty years later, Dad was diagnosed with cancer and given less than a year to live. After his diagnosis, at the request of his children, Dad executed a series of estate planning documents that made specific gifts of real and personal property, as well as bank accounts, that theretofore had been held jointly in the name of Dad and Wife No. 2 or in the name of Wife No. 2 alone. After Dad died, the children demanded that Wife No. 2 relinquish assets per the new will and trust. A dispute then arose between Wife No. 2 and Dad’s children concerning disposition of Dad’s estate, as well as various “tort” claims asserted between the two sides for elder abuse and undue influence. This matter is still in progress.

Financial Elder Abuse (Advocate). Ms. Callahan represented an elderly woman in a financial elder abuse action filed against her eldest son. The object of the lawsuit was to recover title to a \$20 million real estate portfolio the elder had amassed over a 50-year period of time. When the elder was in her 70’s, the elder gradually fell off title to her portfolio of properties and put title in the name of her two sons. She did this as an estate planning strategy directed at avoiding estate taxes. The elder did this pursuant to an oral agreement with her two sons that the properties still belonged to her in terms of any rents or sale proceeds and her ability to improve, sell, encumber, or trade any of the properties in her sole discretion. Over time, the elder traded out of rental properties into raw land and other non-income producing properties (e.g., a ranch and a vacation home that the family used). In order to keep the portfolio in place, the two sons contributed to their mother’s support. When a dispute later arose between the eldest son and his mother, he stopped contributing to her support and would not allow her to sell one of the properties so that she could have a “nest egg” to live on. The other son did not dispute his mother’s ownership of the portfolio and advanced her the monies needed to file a lawsuit to return title of the portfolio to the elder. The lawsuit included a claim for financial

elder abuse. The lawsuit was settled on terms favorable to the elder on the first day of a two-week jury trial.

Agreement to Make a Will / Challenge to Enforceability of Will & Trust (Advocate). As a follow-on to the Case Example No. 5, Ms. Callahan represented the elder's youngest son who was the sole beneficiary under a will and trust the elder created after the disputes arose between her and her eldest son (but before the lawsuit or the settlement). The disinherited son filed a lawsuit challenging the will and trust on numerous grounds, including capacity, undue influence and an alleged agreement to make a will. He was unsuccessful on all counts.