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Mediator-Arbitrator-Discovery Referee
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Probate / Wills and Trusts Case Summaries

Ms. Callahan specializes in resolving business / money disputes. 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:

Breach of Fiduciary Duty / Wrongful Distribution / Trustee Misconduct Claims (Arbitrator). Ms. Callahan was the sole arbitrator in a trust dispute in which the surviving spouse asserted claims against the decedent's children from a prior marriage, serving as successor co-trustees of the decedent's trust, alleging breach of fiduciary duty, wrongful distribution and trustee misconduct with regard to the administration and distribution of trust assets.

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.

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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.

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.

Petition for Recovery of Tax Liabilities Attributable to the QTIP (Mediator). Decedent was the surviving spouse under a QTIP. While her estate was quite small, the QTIP had a value well in excess of the estate tax exemption. There were delays in having an administrator appointed for the decedent's estate such that there was no one in place to timely file the estate tax return or request an extension. As a result, the IRS assessed taxes and penalties. The QTIP paid the tax liabilities, but balked at paying the interest and penalties, resulting in a dispute between the survivor's estate and the QTIP trust. The survivor's estate petitioned to recover the taxes and penalties from the QTIP under 26 U.S.C. § 2207A(a), which provides that when any part of the gross estate consists of the value of QTIP property, the decedent's estate is entitled to recover from the persons receiving the QTIP property the amount by which the total tax due exceeds that tax that would have been due if the QTIP property had not been included, and 26 U.S.C.

§2207(d), which provides that in the case of penalties and interest attributable to taxes due with respect to the value of QTIP property, penalties and interest due on those "additional taxes" follow the same rule of allocation as the taxes. The Executor for the survivor's estate argued that almost 90% of the taxable estate was comprised of assets under the QTIP's control and those assets were what triggered the tax liabilities owed by the estate, so the Trustee of the QTIP was the responsible party who should have filed for extension and filed the 706 return. The QTIP, of course, saw things differently, and contended that Probate Code § 20112(c) applied and allowed for equitable proration of the interest and penalties. Based upon its view of events, the entire amount of the interest and penalties should be charged to the surviving spouse's estate due to actions available to but not taken by the Executor and her attorney. Otherwise, it would be the settlor's children, as beneficiaries of the Trust, who would suffer financial harm, but they did nothing wrong and had no authority to act with respect to the filing of the estate tax return for the surviving spouse's estate.

Disputes Among Siblings Once Mom and Dad Pass (Mediator). Ms. Callahan has mediated a number of cases in which the saga is the same. After both parents pass, the children are left to share in and divide the estate their parents have left them. Whether one sibling is appointed to act as the trustee, all siblings are appointed as co-trustees or some combination of the siblings (but less than all) are appointed as co-trustees, disagreements arise over what they're entitled to as beneficiaries, whether the trustees have conducted themselves properly, whether someone unjustly or unduly received something from mom or dad that should be returned to the estate or charged as an early distribution, etc. The key to resolution in these cases is getting enough information on the table about "the estate" so that they can put a dollar figure – rather than attributions and adjectives – on what they're fighting over, what they stand to gain through resolution and what they stand to lose through litigation. While these are family disputes in the sense that they involve people who are related by blood, all too often there is no family to put back together again – e.g., the children are from different marriages and grew up in completely different households, the children are adults and due to geography or other things have not been close with their siblings for decades, the children as adults have never really liked each other.

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.

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