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**SEP 05 2013**

P.B.

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

Jane L. Schooler  
P.O. Box 969  
Del Mar, CA 92014  
Telephone: 858-597-9353

**STATE BAR COURT**  
**Hearing Department-Los Angeles**

In the Matter of:

Jane L. Schooler  
No. 131676

A Member of the State Bar

) CASE NO 12-0-11554  
)  
)  
)  
) Opposition and Response to Notice  
) of Disciplinary Charges  
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)  
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Jane Schooler("Jane") submits as follows:

**I. INTRODUCTION**

Jane, as Trustee and Personal Representative, was represented by Luce Forward from 2004 to 2010 and by Michaela Curran in 2011 in extensive litigation concerning her parents Trusts and Estate. Jane was not personally a party to the litigation. Jane went to law school to assist her in the family real estate business and is not a practicing attorney.

The following is a chart that highlights actions taken by the Trustees, each side claims there are fiduciary duty breaches by the other.

**JANE**

**Named by Trustors Eugene and Rowena Schooler in their Estate Documents**

**Interim Fiduciary**

**Appointed in Ex Parte hearing as interim fiduciary with only Judge Cline and Mr. Dyson Present; no beneficiary notice**

**Fiduciary Duty to Avoid conflicts of interest (hiring of professionals)**

- 1. Luce Forward represented Jane as T'ee/Per Rep. Luce Forward does not represent anyone else involved or Jane personally
- 2. Hired well known and well regarded specialists in the area of estate/trusts; professionals such as accountants and appraisers
- 3. Jane had no previous connection to any professional hired

- 1. Mr. Dyson represents the Schooler Brothers in the Estate litigation.
- 2. Mr. Dyson represents the Schooler Brothers on Securities Fraud and Bribery (pay off) charges in a 50 Million Dollar Ponzi Scheme in Federal Court
- 3. At the request of the Brothers, Mr. Dyson retained by interim for potential \$350,000.00 in compensation from Trusts to sue Luce Forward, who the Brothers owe approximately \$350,000.00 in litigation fees
- 4. Daniel Little, Interim's attorney, represented the Brothers In the Estate litigation

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2 **Fiduciary Duty of Loyalty**  
3 **(filing petitions or law suits**  
4 **against beneficiaries)**

5 1. The Schooler Brothers filed  
6 voluminous litigation to challenge  
7 the Estate Plan of their Parents,  
8 Jane filed responses where  
9 appropriate

10 2. The Schooler Brothers  
11 interfered with the operation of  
12 the B Trust/Corporation, costing  
13 millions of dollars in revenue,  
14 with the purpose of bankrupting  
15 the business so that funds were  
16 not available to Jane for  
17 litigation, no petition or law  
18 suit was filed

19 3. Between the death of Eugene  
20 and Rowena (Parents) a Schooler  
21 Brother "assisted" Rowena in  
22 putting a mortgage on the Beach  
23 House the proceeds apparently went  
24 to that Brother, no offset was  
25 ever sought

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28 **Fiduciary Duty to Avoid Waste,**  
**Make Estate Profitable, and**  
**Preserve Assets**

1. In the approximate one year  
that Jane ran the business before  
the Brothers litigation started  
produced approximately 1.25  
million

2. But for the Brothers  
interference the Business would  
have made between 3.3 and 4  
million in 2007

3. Jane was required to either  
pay rent or make the Beach House  
more valuable, she did both. The  
Beach House appraised at 1.7

1. Interim joined the litigation  
of the Schooler Brothers and now  
in reality has taken over the  
Brothers litigation in challenging  
and overturning the Estate Plan

2. Between Mr. Dyson and the  
Interim's other counsel, Daniel  
Little, she has filed in the  
vicinity of 39 Ex Partes and  
voluminous petitions against the  
Schooler Sisters since June 2011;  
when Mr. Dyson began representing  
the Schooler Brothers and Judge  
Cline was appointed.

3. The Interim initiated law  
suits against the Schooler  
Sisters in both California and  
Nevada. The Interim did this in  
Nevada even though the Court of  
Appeal had already spoken that she  
was not properly appointed on the  
B Trust

4. The Interim and one of her  
counsel, Daniel Little, got money  
judgments for themselves  
(personally) against the Schooler  
Sisters, using their parents Trust  
and Estate cases.

1. The Interim made zero profit  
in the Business (B Trust and  
Corporation)

2. The Interim sold the Beach  
House for less than the appraised  
amount

3. The Interim sold B  
Trust/Corporation(although it does  
not appear that any funds went  
into bank accounts) property(Reno)  
to a Andrew(Brother, attorney) for  
less than the property was  
purchased for over the Trustee and  
beneficiary objection

1 million as of the date of Rowena's  
2 death and after making repairs was  
3 valued at 1.9 million, Brothers  
4 appraisal 2.2.

4. Jane preserved all Estate and  
Trust assets

5. With exception of Beach House  
listed all property for sale

4. The Interim borrowed face value  
of \$510,000.00 on the Beach House  
with no accounting

5. The Interim used the Beach  
House for her account and  
installed someone in the Beach  
House for the summer of 2011 on;  
locked out the beneficiaries; and  
paid the expenses out of Estate  
Funds(looks like borrowed funds)

**Fiduciary Duty to Avoid Conflicts  
of Interest**  
(fair and reasonable proposals for  
distribution following the Parents  
Directions and Stated interests of  
the Beneficiaries)

1. Jane through her attorney's  
made an extensive series of  
settlement offers/distribution  
plans to the beneficiaries  
according to the terms of the  
Estate Plan, then reversed them

2. Jane filed with the court a  
distribution plan that followed  
the Estate Plan and also took into  
consideration the stated interests  
of the beneficiaries and required  
MAI appraisal for equalization

**Fiduciary Duty to Distribute the  
Estate and Trusts in accordance  
with the Trust and Will Documents**

1. According to her Mother's  
wishes Jane distributed mementos/  
personal effects/personal property  
(2005-2006)

2. Jane distributed the property  
of the Rowena Trust in undivided  
interests; San Pasqual (2006)

1. The personal property of  
Rowena, Katherine and Jane in the  
Beach House appears to have been  
apparently stolen by the Interim

2. The Interim sold the Beach  
House. Eugene and Rowena's  
express intent was that the Beach  
House (a duplex) remain in the  
family to be a home for their  
daughters and for beach access for  
the entire family

\*\*Beneficiaries request a stay  
away order against Interim

1 3. Jane distributed \$500,000.00  
2 to beneficiaries equally; which  
3 was intended as the beginning of  
4 yearly distributions of cash to  
5 beneficiaries from the business  
6 during the beneficiaries  
7 retirement years as intended by  
8 the Parents-Eugene & Rowena  
9 Trustors (2007)

10 4. Jane distributed the B Trust  
11 portion of two of the Las Vegas  
12 Lots to the Schooler Brothers  
13 (stay in effect 2008 ruling  
14 appealed by Bros)Brothers  
15 indicated they would (but never  
16 did) renounce this distribution  
17 (2009)

18 5. Jane distributed the Beach  
19 House to the Schooler Sisters;  
20 According to Court of Appeal  
21 Decision the Schooler Brothers  
22 Disinherited Themselves from the  
23 Rowena Trust and Estate(2012)

a. The day that the Interim entered into the contract for sale of the Beach House she recorded a gift deed to Philip Dyson of what appears to be a Condo

b. The approximately 1.8 million the Interim received in October or November 2012 has not been accounted for, but appears to be substantially gone, zero was distributed either Schooler Sister

c. Federal Prosecutors and Receiver allege in the Schooler Brothers Federal Case that private money is being put in the Brothers Business

3. Interim deeded Riverside Property to Andrew; only brother not named in Federal Indictment

\*It is unclear as to whatever other distributions may have been made to other beneficiaries

15 **Fiduciary Duty to Keep Beneficiary**  
16 **Reasonably Informed and Account**

17 1. Jane contacted each  
18 beneficiary generally by phone and  
19 sometimes by e-mail at least 1 to  
20 2 times per month regarding the  
21 status of estate/trust  
22 administration matters (2004-2006)

23 2. Jane provided answers to  
24 questions and other information  
25 requested, attorneys regularly  
26 updated and responded on legal  
27 matters to the Brothers attorney

28 3. All documents(bank statements,  
escrow balance sheets, etc) were  
generally provided by Luce Forward  
through out the administration and  
litigation of the Estate/Trusts

1. Katherine and Jane have no idea what the Interim is doing until she sues them; she has provided virtually no substantiating documentation for anything

2. When Katherine subpoenaed the Interim's bank records, the Interim's attorney, Daniel Little sent a letter to the Bank telling them not to send any records

Katherine is both a beneficiary and the Trustee of the B Trust

3. The Interim waived attorney client privilege in 2011 and Katherine has requested a copy of the file repeatedly, but this has not been provided

4. The Interim asked the Court to close the probate case without her accounting for (face of Trust

1 4. Jane mainly used accountants  
2 and or Luce Forward to prepare  
3 accountings for the Estate and  
4 Trusts, and Corporate financial  
statements and Profit/Loss

5 2. Accountings filed with the  
6 Court were pre-approved

Deeds)\$510,000.00, which it did

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5. The Interim filed accountings  
in the Trusts, the court many  
defects including apparently  
missing money, probate money used  
in the Trusts and also misused  
funds, the defects were never  
cleared with the probate examiner.

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Jane's attorney's advised her that fiduciaries are transparent  
(providing all information and answering questions), follow the Estate  
Plan regarding distribution, place beneficiary interests first and  
always take the high road.(don't sue beneficiaries and so forth).  
Katherine, (The Trustors, Eugene and Rowena) Jane, Jane's attorney's  
and the Judges from 2005 to June 23, 2011 agreed everyone hired by the  
Trustee and Jane, were doing what they were supposed to. The Brothers  
filed continuous petitions to remove Jane.

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On June 21, 2011 the cases were assigned to Judge Richard Cline,  
by Judge Powazak who recused himself as he is good friends with Mr.  
Dyson, the Schooler Brothers new counsel. The CMC conference on June  
23, 2011 was the first court appearance on the case for Mr. Dyson and  
Judge Cline. At this court appearance the court removed Jane on its  
own motion for failing to settle the litigation and for attorney fees  
that exceeded \$500,000.00.

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The Schooler Brothers, their attorneys, Judge Cline (now  
retired 2013), the Judge he assigned to the case to in July 2012,  
Judge Julia Kelety, say that the Interim is a good fiduciary. Luce  
Forward had never heard of Gloria Trumble (Interim) and the difference  
between how the two Fiduciaries comply (or not) with fiduciary duties  
is striking.

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2                    **II                    RELEVANT WILL AND TRUST PROVISIONS**

3 Rowena's Will, which was executed on November 9, 1999, provides, in  
4 relevant part:

- 5                    • All property passing under the Will passes to the Trustee of  
6 Rowena's Trust, to be "held, administered, allocated and  
7 distributed" according to the terms of the Trust. The  
8 Personal Representative may, at the risk of the estate,  
9 collect, hold, and retain the property Rowena owned at the  
10 time of her death, until in the Personal Representative's  
11 judgment, the disposition or distribution of the property  
12 should be made. (6.2)
- 13                    • The property may be retained even though it includes property  
14 in which a Personal Representative is personally interested.  
15 (6.2)
- 16                    • The Personal Representative has the same authority as  
17 described in the Article entitled, "The Powers of the Trustee"  
18 in Rowena's Trust. (6.5)
- 19                    • All expenses incurred in defending the Will or Trust from  
20 contests shall be borne by the share of property the  
21 contesting beneficiary is to receive from the Will or Trust,  
22 even if the beneficiary is successful. (7.3)
- 23                    • **No Contest Clause.** I want the greatest deterrence against  
24 interference with my estate plan that the law allows. If any  
25 heir, issue, relative, legatee, devisee, beneficiary, or other  
26 interested person...alone, or in conjunction with any other  
27 person or persons, *directly or indirectly* (1) institutes any  
28 legal proceeding that attacks or contests this Will or the  
Trust Agreement, or attacks or seeks to impair or invalidate  
any of their provisions; (2) asserts in any manner any claim  
against my estate or property other than as provided in the  
Will or Trust Agreement;...(4) seeks to change my testamentary  
plan (such as challenging the appointment of fiduciaries  
designated by me or in the manner described by me); (5)  
objects to any construction or interpretation of this Will or  
the Trust Agreement, or any provision of them, that is adopted  
or proposed by the Trustee or my Personal  
Representative...or(7) conspires or voluntarily assists any  
person or persons attempting to do any of these things, I  
direct that Person (the "Contestant") and all persons  
conspiring with or assisting him or her shall take none of my  
property and nothing from my estate. All these persons are  
expressly disinherited. Any and all gifts or property that

1 otherwise would have gone to these persons shall be forfeited  
2 and shall pass as if these persons had predeceased me without  
3 living issue. The foregoing provisions shall apply to any  
4 persons who claim that I entered into an oral agreement  
5 providing for the disposition or transfer of property to those  
6 persons or others in any way inconsistent with the provisions  
7 of this Will or the Trust Agreement. (7.2)

8 Rowena's Will also impose upon a contesting beneficiary the expense of  
9 a contest whether successful or not.

10 **Expenses of Contest.** My personal Representative and the Trustee  
11 serving under the Trust Agreement are expressly authorized to  
12 defend against any and all of the actions described in Section  
13 7.2, including any contest or attack or any nature upon this  
14 Will, the Trust Agreement {i.e. Rowena's Trust}, or any of their  
15 provisions. All expenses incurred in the defense of any of the  
16 actions or matters described in Section 7.2. shall be paid, as  
17 the Trustee determines, from either from my probate estate or the  
18 trust estate as expenses of administration. If, however, a  
19 Contestant is or becomes entitled to receive any property or  
20 property interests including in my probate estate or the trust  
21 estate, whether under this Will, the Trust Agreement, or any  
22 other instrument, then all expenses incurred by the Trustee or my  
23 Personal Representative in the defense of the actions undertaken  
24 by the Contestant shall be charged against and paid from the  
25 property or property interest that the Contestant otherwise would  
26 be entitled to receive, whether or not the Trustee or my Personal  
27 Representative was successful in the defense of the Contestants  
28 actions. (7.3)

- 29 • All my Personal Representative's decisions made in good faith  
30 to take or not take actions authorized by this Will or by law  
31 shall be binding and conclusive on all interested persons.  
32 (Preamble Article 6, Powers of Personal Representative)
- 33 • My Personal Representative may pay taxes, assessments,  
34 reasonable compensation of the employees and agents of the  
35 estate, and other expenses incurred in the collection, care,  
36 management, administration, and protection of the estate.  
37 (6.8)
- 38 • Incorporation of the Trust. If the Trust is not in existence  
39 at my death, or if the gift of the residue of my estate to the  
40 Trust cannot be given effect for some other reason, I  
41 incorporate into this Will at this place, as though it were  
42 set forth here verbatim, the Trust Agreement for the Trust as  
43 it exists at the time I execute this Will. Further, I ratify,

1 confirm and republish that Trust Agreement to be included in  
2 my Will for the disposition of my estate... (4.2)

- 3 • Collecting and Holding Property. My Personal Representative  
4 may, at the risk of my estate, collect, hold and retain the  
5 property I own at my death until, in his or her judgment, the  
6 disposition or distribution of the property should be made.  
7 The property may be retained even though it includes property  
8 in which a Personal Representative is personally interested.  
9 The Personal Representative shall have no duty to dispose of  
10 any part of the estate property owned by me at my death that  
11 would not be a proper investment for the Personal  
12 Representative to make. My Personal Representative may,  
13 without liability, continue to hold that property. (6.2)
- 14 • My Personal Representative may administer my estate under the  
15 California Independent Administration of Estates Act without  
16 court supervision. (6.1)
- 17 • The Personal Representative of my estate... shall have all of  
18 the powers and authority granted to him or her by law  
19 (including the powers set forth in Probate Code sections 16220  
20 through 16249) and under the provisions of this Will  
21 (including the powers described below), to be exercised in his  
22 or her sole and absolute discretion, subject only to his or  
23 her giving such court confirmation or approval as is required  
24 by law. All my Personal Representative's decisions made in  
25 good faith to take or not to take actions authorized by this  
26 Will or by law shall be binding and conclusive on all  
27 interested persons. (Preamble Article 6 Powers of Personal  
28 Representative)

19 Rowena's Trust, which was executed contemporaneously with the Will,  
20 provides in pertinent part:

- 21 • To Determine Values and Allocate Property. The Trustee, in  
22 his or her discretion, shall determine the valuations of  
23 trust property for purposes of divisions, allocations, and  
24 distributions, and those valuations, reasonably determined,  
25 and shall be final and binding on all beneficiaries and  
26 other persons having an interest in the trust. The Trustee  
27 may adjust any valuations retroactively if a different  
28 valuation is finally determined for federal estate tax  
purposes. The Trustee is authorized to effect the  
division, allocation, or distribution of trust property in  
divided or undivided interests, in or in kind or partly in  
both, as the Trustee shall determine and to sell any  
property in connection with the division, allocation, or  
distribution if the Trustee deems that action necessary or  
appropriate. A distribution in kind may be made pro rata

1 or non-pro rata, and a beneficiary may receive all or a  
2 portion of any asset as part of a distribution or  
3 allocation in kind. The Trustee may allocate or distribute  
4 property (or the right to receive property) to any one or  
5 more of the trusts created under this Trust Agreement of  
6 the beneficiaries of any trust, in such case, other trust  
7 assets shall be used to equalize any disproportionate  
8 allocation or distribution of items of to any one or more  
9 trusts or beneficiaries.

- 10 • Compensation. As to each separate trust, the Trustee  
11 shall be entitled to pay himself or herself from the trust  
12 estate an amount of compensation that he or she determines  
13 in his or her absolute discretion. There is no limit  
14 placed on the amount of compensation the Trustee may be  
15 paid under these provisions. (13.2)
- 16 • Right of Indemnification and Reimbursement. A Trustee  
17 shall be entitled to indemnification and reimbursement from  
18 the trust estate of which that person serves as Trustee for  
19 any expense, loss, damage, liability, costs, or claim  
20 (including, without limitation, attorney's fee and costs of  
21 litigation) incurred by the Trustee by reason of any act  
22 performed or omitted to be performed by the  
23 Trustee,.... (13.3)
- 24 • The Trustee may collect, hold and retain trust property  
25 until, in the judgment of the Trustee, disposition or  
26 distribution of the property should be made. (16.3)
- 27 • The property may be retained, even if it includes property  
28 in which a Trustee is personally interested. (16.3)
- The Trustee may retain, purchase, or otherwise acquire  
property that is unproductive or underproductive of current  
income...The Trustee shall have a duty to make trust property  
productive, but property may be made productive by  
appreciation in value as well as by the production of  
income. (15.5)
- The discretionary powers granted to the trustee under the  
Trust Agreement "shall be absolute." (14.2)
- Where the Trust Agreement states that the Trustee "may" do  
an act or is "authorized" to act, the Trustee is expressly  
permitted or authorized to do the act described, and his or

1 her decision to do or not to do the act shall be made in  
2 the Trustee's sole and absolute discretion in the exercise  
3 of her fiduciary powers and duties. (14.1)

- 4 • The Trustee shall be deemed to have acted in good faith and  
5 on behalf of the trust if the Trustee acted in a manner  
6 reasonably believed by the Trustee to be within the scope  
7 of his or her authority and in the best interest to the  
8 trust and its beneficiaries. (13.3)
- 9 • The Trustee can act arbitrarily, so long as he or she does  
10 not act in bad faith, and no requirement of reasonableness  
11 shall apply to the exercise of his or her absolute  
12 discretion. This does not mean that the Trustee may do as  
13 he or she pleases, but rather that the Trustee uses his or  
14 her own personal subjective best judgment. (14.2)
- 15 • The Trust contains the same no contest clause as the Will  
16 and the same provision regarding allocation the expense of  
17 defending a contest to the share of Will or Trust property  
18 of the contesting beneficiary, regardless of outcome.  
19 (17.2,17.3)

20 Relevant sections of the Family Trust executed in 1989:

21 The Trustee shall have the power in the Trustee's absolute  
22 discretion to take any action and to make any election to  
23 minimize the tax liabilities of this trust and its  
24 beneficiaries..... (5.10)

25 Notwithstanding anything contained herein to the contrary, it is the  
26 **Trustors' specific wish and they direct any Successor Trustee hereof**  
27 **to be mindful that it is their desire that the Trustors' residence**  
28 **located at 1717 Coast Boulevard, Del Mar, California, is to be**  
29 **considered a unique and special asset. Therefore, the Trustors**  
30 **direct that this asset shall not be liquidated until absolutely**  
31 **necessary to meet the needs of the Trustors, but rather that their**  
32 **home should continue to be made available for any of the Trustors**  
33 **three (3) children who wish to reside there, R. Katherine Schooler**  
34 **Kerns, Jane L. Schooler, and E. Andrew Schooler, providing that if**  
35 **any such children do desire to continue to live in the Trustors'**  
36 **residence, then these children should pay the property taxes on said**  
37 **property and rent to the estate in an amount not to exceed Twenty-**  
38 **five Hundred Dollars(\$2500.00)per month total.(5.21)**

39 To sell such property as the Trustee may deem necessary to make  
40 division or distribution and to partition allot and distribute the  
41 trust estate....., at valuations determined by the Trustee. (5.3)

1  
2 Following the death of the surviving Trustor, the Successor Trustee  
3 shall **divide Trust "B" or the entire trust estate**, as the case may  
4 be, into five shares (5) shares of equal market value.....(Section 3.1  
Family Trust)

5  
6 **III FORMAL RESPONSE**

7 Count one is denied and the introduction, will and trust provisions  
8 and all responses to counts two and three are incorporated by  
9 reference; any allegation or act barred by the statute of limitations  
10 is specifically denied on that basis

11 **Paragraphs 1, 2, 3, and 4** are admitted as substantially accurate.

12 **Paragraphs 5 and 6** Jane lists distributive sections and other sections  
13 of the Will and Trusts in section II

14 **Paragraph 7** is admitted as substantially accurate.

15 **Paragraph 8** is admitted as substantially accurate, with the exception  
16 of the characterization "equal beneficiaries" Jane refers to the  
17 Estate and Trust documents themselves for the exact wording.

18 **Paragraph 9** is denied. Jane refers to the specific Estate and Trust  
19 Documents regarding the time for distribution. Some of the  
20 distribution sections of the Will and Trusts are stated above in II  
21 Pertinent Will and Trust provisions.

22 **Paragraph 10** is substantially admitted with the following exceptions:  
23 Las Vegas Parcel APN 123-28-601-025 was owned in the same proportional  
24 interest as lots 022, 023 and 024 between the B Trust and TDM.

25 It is unclear what bank account is being referred to with  
26 reference to "a bank account with approximate balance of \$31,400.98 at  
27 Wells Fargo".  
28

1 Tierra Del Mar Corporation is a land investment corporation, it  
2 buys and sells land for profit, Jane does not admit it is a "holding"  
3 corporation.

4 **Paragraph 11** is substantially admitted with the following exceptions:  
5 Las Vegas Parcel 123-28-601-025 owned in the same proportional  
6 interest as lots 022, 023 and 024 between the B Trust and TDM.

7 **Paragraph 12**

8 **A.** Is denied in the aspect that the Beach House is not a triplex  
9 (there is no rental studio); it is a duplex. The continual  
10 representation of the Beach House as a triplex has lead to significant  
11 problems.

12 The person that the Interim sold the Beach House to made  
13 substantial structural changes to the Beach House including converting  
14 it to a triplex, all of which has been done without appropriate  
15 zoning, building permits or approval from the City of Del Mar.

16 The City of Del Mar has issued a citation regarding this  
17 situation and Del Mar considers the Schooler Sisters the owners. The  
18 Schooler Sisters may ultimately be held responsible for the remedy of  
19 building code and other violations.

20 **B.** The King note could not be located. The note was from the 1960's.  
21 Luce Forward advised the note was uncollectible because of several  
22 legal doctrines (latches/estoppel) and it was not worth the costs to  
23 go through lost note procedures.

24 **Paragraph 13** admitted as substantially accurate. What is referred to  
25 as the "Escondido Parcel" is referred to by me as San Pasqual.

26 **Paragraph 14** is denied lines 4 through 9.

27 Jane believes the loan was a variable rate loan with an escrow  
28 account for taxes and insurance. Loan documents are the best evidence  
of the terms of the loan.

1 The face of the Rowena's deed reads "transfer from trust/loan  
2 purposes". There are no indicia that Rowena intended to transfer the  
3 property back into the trust, that she made a mistake or that she  
4 could do so after the refinance.

5 Luce Forward reviewed the situation and the documents and advised  
6 Jane that we would not win the Heggstad Petition that it was a waste  
7 of money.

8 The Interim also did not file a Heggsted Petition.

9 **Paragraph 15** is denied in its entirety.

10 **Paragraph 16** is denied as addressed above.

11 **Paragraph 17** is denied in its entirety.

12 There were five (5) beneficiaries and Eugene and Rowena, Parents  
13 and Trustors, all of whom the Personal Representative owes duties to,  
14 not just the Schooler Brothers.

15 The Beach House was the most valuable asset of Rowena's Probate  
16 Estate but not of her integrated Estate.

17 Rowena acknowledged that Jane had a personal interest in the  
18 Beach House and other trust and estate property in her Estate  
19 documents, as she is also a beneficiary.

20 The Beach House was the only specifically named property in the  
21 Parents Estate Documents; this by Trustors that held during their  
22 lifetimes a very significant amount of real estate. What kind of  
23 personal representative would have ignored them, while they were  
24 making a generous gift of property to their children.

25 Jane, as Personal Representative and Trustee, used the highest  
26 credential for appraisers. The MAI appraisal for the date of death is  
27 1.7 million, after repair the Beach House was appraised at 1.9  
28 million. The Schooler Brothers MAI appraisal, one assumes that they  
had the Beach House appraised as of the date it would be the highest

1 value for the purposes of litigation, this was 2.2 million. The  
2 Petitioner should be required to provide this 4 million dollar  
3 appraisal for inspection by the Court and Jane.

4 Rowena's Will and Trust gave me discretion as to when to  
5 distribute the Beach House and there was no obligation to sell; ever.

6 We immediately had a possible serious tax situation. My legal  
7 advice was to wait for tax clearance from the Federal Government  
8 before making any distribution of real property. The Trust and Estate  
9 paid zero estate tax.

10 During the period of time that the estate was being administered  
11 all kinds of distributions were discussed and investigated including  
12 liquidation. Liquidation was not tax feasible.

13 I tried to distribute the shares to siblings in property that  
14 they expressed interest in having. The Trust specifically authorized a  
15 non pro rata distribution.

16 The Schoolers in their integrated estate plan mention one  
17 property, the Beach House, and state very specific instructions.  
18 Although it is acknowledged that Beach House was transferred from the  
19 Family Trust to the Rowena Trust, the Court of Appeal stated that this  
20 could be used to show that the Parents intent never changed.

21 After extensive settlement negotiations-offers failed in which  
22 modified liquidated distribution plans, you name the amount all cash  
23 offers, plans that switched the distributed properties, etc. all were  
24 rejected, Jane filed a non pro rata distribution plan with the court.  
25 The Brothers didn't want the house the sisters did. The Brothers  
26 wanted to sell the Reno properties the sisters didn't and so forth.  
27 Jane took all that into account and looked globally to all whom a duty  
28 was owed and the stated interests of the beneficiaries.

1 Distributions of money or property were made almost yearly, until  
2 2012 when (Katherine, sister, B Trust trustee, officer-director of the  
3 Corporation) distributed the remainder; this was the end of period of  
4 the change from C Corporation to S corporation.

5 Rowena (mother) anticipated that Jane would have difficulties  
6 with the Brothers after she passed away. The Rowena Trust and Will  
7 have extremely broad discretionary powers, as the Court of Appeal has  
8 stated: Rowena intended to give Jane complete discretion and liability  
9 less administration. Rowena has an unusual and an extremely  
10 comprehensive no contest and costs of litigations provisions, with the  
11 intent to deter litigation.

12 It seems that the Petitioner is operating under the impression  
13 that I was supposed to sell the Beach House or that is some way a sale  
14 was required.

15 **Paragraph 18** is denied in part.

16 Andy had been living at the Beach House for years while he was  
17 single he subsequently moved out to his girlfriend's house and they  
18 were married.

19 Jane had sold her own home and was renting. Rowena was not  
20 getting along well with Andrew and was not in good health. Rowena  
21 wanted to stay home, so Jane moved to the Beach House in 2003 to help  
22 Rowena, who died the next year.

23 The Beach House is a duplex (upstairs and downstairs) the renters  
24 occupied downstairs. I never actually collected any rent from them.  
25 However, that was my understanding that it was in the range of 2,000.  
26 I believe this was the market rate for the property.

27 **Paragraph 19** is denied.

28 I never told Andy he had to leave the Beach House or that he

1 Could not use the beach or parking. He left right after my Mom died  
2 and never really came back.

3 I never told anyone that I was going to sell Beach House.  
4 We talked about different options. But no decisions could be made  
5 until we had tax clearance.

6 The tenants caused problems. Although Andy liked them, the  
7 police were being called to the Beach House regularly by the  
8 neighbors. They left a door open toward the beach and a steady stream  
9 of kids were wandering in and out of the building. On a continual  
10 basis they held large and loud parties, which were basically causing a  
11 nuisance. They also substantially damaged the property. After my  
12 Mother's death the neighbors talked to me about moving them out.

13 Additionally, I had to repair a balcony which was in a dangerous  
14 condition, this involved removing the ceiling in the downstairs unit  
15 which was the unit the renters occupied.

16 We also had voluminous litigation by the Schooler Brothers which  
17 prevented the Rowena Estate from closing; they filed 10 21320's among  
18 a plethora of other litigation.

19 **Paragraph 20** is denied.

20 Jane distributed clickers for beach access parking to all  
21 beneficiaries. Jane repaired, cleaned, retiled, painted, replaced  
22 broken appliances and plumbing, repaired broken windows, replaced  
23 missing doors in and generally refurbished the beach bathroom for use  
24 by the beneficiaries.

25 Some of the beneficiaries and the Trustors grandchildren and  
26 great grandchildren used the beach parking, beach access and beach  
27 bath on a regular basis.

28 All of the beneficiaries lived in Del Mar, Solana Beach or  
Oceanside within a short drive to the Beach House. Locks were changed

1 when doors were replaced. The Brothers just stopped coming around  
2 when they sued the Estate.

3 **Paragraph 21** is admitted. It took some time to determine that the  
4 Beach House was not in the Rowena Trust.

5 **Paragraph 22** is denied.

6 **Paragraph 23** is substantially admitted. This is the approximate  
7 administrative period. This is when Luce Forward told me was  
8 appropriate to pay rent.

9 Beneficiaries and the grandkids and great grandkids (of Trustors-  
10 Eugene and Rowena) regularly using the parking, beach and beach  
11 bathroom. After the Schooler Brothers filed the litigation they  
12 stopped coming around.

13 **Paragraph 24** is denied as to the netted amount, I'm just not sure at  
14 this point. The closing statement would be the best evidence of the  
15 netted amount. Luce Forward faxed the Schooler Brothers attorney at  
16 the time (William Brewer) the escrow papers at closing. Profit loss  
17 statements, financial statements and accountings were prepared by Luce  
18 Forward and accountants.

19 **Paragraphs 25, 26, 27, 28, 29** The letters themselves are probably the  
20 best evidence of the contents of the letters. Luce Forward received  
21 and sent routine legal correspondence and settlement offers. I may or  
22 may not have had knowledge of the specific contents of any certain  
23 letter that Luce Forward sent or received.

24 It is the Trustee's responsibility to monitor the attorneys.

25 We tried everything to settle the dispute over the Beach House,  
26 while keeping with the Trustor desire the Beach House is keep in the  
27 Family, while distributing cash to the Brothers, as they wanted a  
28 sale. We also wanted to retain favorable parent-child pre prop 13  
taxes.

1           Regarding trustee fees, corporate fees and executor fees, the  
2 executor fee is set by law and was \$30,000.00, the petition for its  
3 payment was pre-approved however, and it was not paid.

4           Luce Forward recommended between 1 to 3 percent of the value of  
5 the trusts per year as standard compensation. Luce Forward  
6 characterized the one time fees as extremely modest. Court and or  
7 beneficiary approval of Trustee fees is not required. The Corporation  
8 paid Jane yearly what it considers a token for being officer and  
9 director over the last 35 years. The Corporation generally pays a  
10 bonus for sales.

11           The Family Trust disinherits a beneficiary that challenges the  
12 compensation.

13           The buying and selling of raw land is a specialized industry and  
14 generally is not a common skill set. Commissions and fees for raw  
15 land are usually higher than improved property. For example the  
16 standard real estate brokerage fee is 10%.

17           Jane managed the real estate business which included listing all  
18 properties for sale at what probably was end user rates during the  
19 Administration period of the Estate.

20           Jane surveyed the markets in the location of each property; made  
21 extensive repairs the Beach House (which was in tear down condition at  
22 the time of Rowena's death), evaluated each area for the possible  
23 appropriate timing of sales, administered the Estate, did short and  
24 long term tax planning, filed distribution plans with the court, and  
25 tried to reach a settlement regarding the assets of the Trusts and  
26 Estate.

27           There is no credible evidence or comp to support for an appraisal  
28 of 3.5 or 4 million for the Beach House. The Schooler Brothers never

1 produced such appraisal and neither has the Petitioner here, from an  
2 MAI appraiser or any other appraisal carrying any type of credential.

3 **Paragraph 30 and 31** are denied.

4 **Paragraph 32** The letter is the best evidence of what the letter says,  
5 but what was probably the intention here is that from the sales of the  
6 Las Vegas lots (022,023,024) which were contemplated to be in 2007 (if  
7 the Brothers would not have interfered with the Business) would have  
8 netted maybe 3 to 4 million the Brothers would receive the Sisters  
9 share out over a few years. When we were unable to reach a  
10 comprehensive plan for distribution; we sometimes backed up and tried  
11 to take one step, as it sounds like here (first step in a modified  
12 liquidation plan).

13 The Petitioner may be misconstruing what was viewed as tax  
14 planning by Luce Forward in a modified liquidation plan as trying to  
15 gain some advantage for Jane.

16 The tax basis in these Las Vegas lots was \$24,000.00 per ten  
17 acres. The projected sales prices in 2007 ranged between 1.1 to 1.5  
18 million per 2.5 acre lot.

19 The Beach House would in turn be distributed to the Schooler  
20 Sisters, most likely in a manner to preserve the parent-child taxes on  
21 the entire Beach House.

22 We sought to reduce taxes of every kind and regardless of who  
23 ultimately would be paying them.

24 Jane had previously discussed liquidation of the estate with tax  
25 advisors and they stated if you do that "send all the money to the  
26 Federal Government and see if you get anything back".

27 There were many settlement letters and discussions including  
28 offers that distributed the Beach House to the Brothers.

1 **Paragraph 33** is denied. The amount of rent paid was determined with  
2 the assistance of Luce Forward which used a combination of factors  
3 including market rate and the rent amount stated in the Family Trust.

4 The June 1, 2006 date did not relate to complaints by the  
5 Schooler Brothers but rather the administrative period of the Estate  
6 and Trusts. My accountings prepared mainly by accountants and Luce  
7 Forward were pre-approved.

8 The fair market rental value was around \$2,000. for each unit.  
9 The fair market value of the Beach House on quality appraisals was  
10 between 1.7 million to 2.2 million.

11 The Brothers never contributed anything towards the Beach House,  
12 money or otherwise and were not expected to, so even if they never saw  
13 any accountings or original/source documents the bills were being paid  
14 by Katherine and/or Jane especially after the Business was bankrupted  
15 by the Brothers; there was no place else for the money to come from.

16 I believe I brought in these documents to the Brothers attorney's  
17 (Dyson) office. They copied originals while I watched them and  
18 waited.

19 We later clarified original documents as regarding the Interim,  
20 that they wanted the original Trusts/Wills and Deeds, but I did not  
21 have them.

22 I never deeded any property to my name as Trustee  
23 or Personal Representative, unless the property was sold. In that  
24 case I either recorded an affidavit of death or certificate of  
25 incumbency (Nevada) one minute before the deed. Everything was left  
26 in the names of the Parents.

27 **Paragraph 34** is denied. The Rowena Trust and Estate were made  
28 profitable both by appreciation in value by making repairs and the

1 payment of rent. The downstairs unit was extensively damaged;  
2 including a cracked slab, unsafe heater, broken water heater etc.

3 **Paragraph 35** is denied. I paid my own personal expenses. Absent some  
4 other agreement most commonly in residential rentals the Landlord pays  
5 for maintenance and repair, the water, sewer, trash, common area  
6 utilities and lighting and the kitchen/laundry appliances if they are  
7 provided.

8 After about 2008 most or all of the expenses at the Beach House  
9 were paid by Jane personally.

10 **Paragraph 36** is admitted as to the sale of Las Vegas Lot APN ending  
11 008 sold for \$775,000.00 in 2006. The escrow closing statement is the  
12 best evidence of the actual amount netted from the sale.

13 **Paragraph 36** lines 12, 13, and 14 are denied.

14 I am not positive of the net profit the escrow settlement sheet  
15 would be the best evidence. The proceeds from this sale helped  
16 provided a \$500,000.00 distribution to beneficiaries. Luce Forward  
17 faxed the escrow papers to the Schooler Brothers attorney at the close  
18 of escrow. The sale should appear on the business's profit and loss  
19 statement, financial statement and accountings.

20 **Paragraph 37** is denied. There was a Family meeting called as I had  
21 told everyone that we would start regular family meetings in person  
22 after we received tax approval on the 706.

23 The meeting was billed as a tax meeting. All were informed that  
24 the meeting topic was taxes. The Trusts accountant, CBIZ, gave a  
25 presentation and was present to answer beneficiary questions regarding  
26 taxes. Luce Forward was available to answer questions and/or provide  
27 information.

28 The issue really was taxes on the distribution, did the  
beneficiaries want the Trust and Corporation to pay their taxes and

1 just distribute a check that would be entirely spends able by them.  
2 There were benefits and draw backs to both methods. I favored taking  
3 care of the taxes for the beneficiaries. However, the Schooler  
4 Brothers stated they wanted to handle their own taxes so it was done  
5 that way for everyone.

6 There was no restriction on who beneficiaries could bring to the  
7 meeting and although it probably was not unforeseeable that  
8 beneficiaries would bring an attorney and or an accountant, they  
9 brought a litigation attorney, William Brewer, who knew nothing about  
10 taxes and whose negative reputation preceded him. Luce Forward had  
11 had one case with him previously. It was Luce Forward's position that  
12 if they had brought either a good quality attorney and/or accountant  
13 it would have been helpful.

14 I think rather than information not being provided the Brothers  
15 and their attorney didn't understand the CBIZ accountant's  
16 presentation.

17 For example we keep a loan running between Corporation and Trust  
18 and we paid it back when sales were made etc. No actual money was  
19 lost, regarding the \$85,000.00 we would have to go back to the CBIZ  
20 documents or have Luce Forward explain it.

21 Part of the delay in distribution was that we had to look at the  
22 tax situation further. The property was sold to make a distribution  
23 because at least one of the brothers stated he wanted cash, it also  
24 supplied some reserve and paid expenses.

25 **Paragraph 39** I am unsure of what e mail is being referred to.

26 However, in many respects the larger the estate is the more  
27 settlement options you have. Making distributions does reduce the  
28 estate but more creative settlement options may be foreclosed.

1 I did favor this type of non pro rata distribution. This is an  
2 example of shares of approximate equal value of one million for each  
3 of the five beneficiaries. Regarding the Brothers it allowed each  
4 Brothers distribution to be tailored to their own preferences and  
5 needs. Each lot would be set up in title or tax entity of the  
6 beneficiaries choosing, so it could be a LFP, LLC, Trust or sold for  
7 cash, but there were 3 lots and three brothers.

8 The Business had more economic power and was more valuable kept  
9 together until the transition from C to S corporation was complete and  
10 the property was ready for end user sale.

11 It is also fairly safe to say we tried every option to settle the  
12 Beach House, including offering to distribute the Beach House to the  
13 Schooler Brothers.

14 Katherine reluctantly agreed to these settlement proposals, in  
15 main part because she felt the continued dispute was disrespectful to  
16 the Parents.

17 The Brothers rejected these settlement offers.

18 **Paragraph 39** I do not specifically remember this letter but these were  
19 repetitive themes, we addressed their issues.

20 Running this kind of litigation was extremely expensive. The  
21 accountants recommended that I get the Beneficiaries to waive  
22 accountings and go forward by distributing source documentation.

23 It was never possible.

24 In 2010 the Judge that had been on the cases for five years  
25 allowed the Trustees and Personal Representative to go forward without  
26 attorneys. Regardless of who had to pay the litigation fees they were  
27 getting high and the Trustees tried to mitigate them.

28

1 **Paragraph 40** I had the checks delivered to the Brothers and they  
2 signed for them, so that would be the best evidence of when they  
3 received the checks. I do not exactly understand line 18 and 19.  
4 The Brothers or some of them asked for a cash distribution so I made  
5 one. On lines 20 through 22, at this point it is difficult for me to  
6 say what one particular letter in 2007 said. It seems the original  
7 documents, the documents prepared by the accountants and or the  
8 accountings should have answered these questions.

9 **Paragraph 41** is denied in its entirety.

10 The offers were under value and as Luce Forward termed it a  
11 "litigation trap". Jane's real estate broker was talking with Mark  
12 Lefkowitz (Milco) agents and Jane had spoken with Mr. Lefkowitz  
13 personally. Mark Lefkowitz purchased lot 008 the year before for  
14 \$775, 000.00. Mr. Lefkowitz had at this time Lot 025 in escrow or was  
15 in talks for \$950,000.00. which closed at this price.

16 Although, real estate prices were generally receding into the  
17 recession, this area of Las Vegas was appreciating rapidly.  
18 Jane and her Broker in a pocket listing type arrangement had set the  
19 pricing at 022/1.1, 023/1.3, 024/1.5

20 Mr. Lefkowitz's broker indicated to the Corporation's Broker  
21 that he was interested all three lots, as then he would own the  
22 complete 10 acre parcel. (which makes the entire parcel more valuable)

23 Jane only sold any property at the very highest price with as  
24 much mitigation of taxes as possible. Ultimately, it is never a  
25 mistake to fail to sell raw land to an investor or anyone other than  
26 an end user.

27 I did not express interest in buying this property. It was  
28 offered to Louis for sale. Although, Milco is an investor or a land  
acquisition (assembler) company for developers, they were paying a

1 good price and the prices paid by them were moving up quickly.  
2 Because of the relative value of this property and its location  
3 property taxes  
4 was one of the major expenses of the business. Also in view of the  
5 coming recession it was advisable to have money available for  
6 investment opportunities and/or distributions.

7 **Paragraph 42** is denied.

8 This was just a very low offer for the 80 acres. The property  
9 was designated as a long term hold property. It cost about \$500.00  
10 per year to hold this property.

11 We did bring in the prospective buyers for a meeting in Rancho  
12 Santa Fe with Luce Forward and Jane. The prospective buyers are  
13 investors who were hoping to pick up the property at a low price amid  
14 a family dispute.

15 They never provided Jane with necessary documentation that they  
16 had the \$500,000.00 available or had the capacity to obtain the funds  
17 by loan. It was suspected that they hoped to tie up the property  
18 while selling the property to another.

19 The property was offered to be distributed to the Brothers so  
20 that they could do whatever they wanted with the property.

21 At various times one beneficiary or another made offers or  
22 expressed interest in purchasing estate property. This was somewhat  
23 attractive as the property would remain in the family and not be sold  
24 at investor prices. Ultimately, it was decided that there was too much  
25 potential for unfairness and decided on a no sales to beneficiaries'  
26 policy.

27 **Paragraph 43** is denied.

28 During the administrative period many personal items were  
distributed per my Mothers specific request such as the flag that

1 covered my Dad's casket, which was hand delivered by me to a brother,  
2 my Dad was a World War II veteran; My mothers engagement ring and  
3 wedding ring were hand delivered by me to my sister per my mom's  
4 request and so forth.

5 I changed things out that I could, for example, my mom left Andy  
6 a piece antique furniture, he didn't want it and he wanted a crystal  
7 vase my Mom left me so I traded that. A sister in law wants some  
8 different china and so forth.

9 This and the like together with the Beach House and San Pasqual  
10 was the property of my Mom's Trust and Estate. These personal items  
11 and her home, the Beach House, I believe these were to her, her most  
12 valuable possessions.

13 I think she felt that she and her Husband, my Dad, had provided  
14 financially for their children during their lifetimes and that they  
15 had left the Business (B Trust and Corporation) to be additional  
16 security for their children's retirement after their own deaths.

17 Luce Forward advised me not to distribute any property from the  
18 business until we had tax clearance.

19 The Schooler Brothers were also distributed Las Vegas Lots 022  
20 and 023 in 2009(B Trust) and 2012(corporation).

21 The San Pasqual (stated Escondido by Petitioner) property  
22 consisted of approximately 20 acres, 2 to 3 luxury home sites, located  
23 with views of Lake Hodges and adjacent Vineyard Golf Course. I  
24 believe it was my Mothers intention to handle this property during her  
25 lifetime. The way these properties were going is interests were being  
26 sold to others co-tenants of the group or they were hiring or selling  
27 to developers, or being developed by the owner. She just wasn't able  
28 to work this out in her lifetime. There were severe governmental

1 agency restrictions placed on the property along with other  
2 development difficulties.

3 It would be my hope that even amid dispute and accusations no  
4 child would refer to any part of their parents gift using the words  
5 "only" as the State Bar has.

6 **Paragraph 43 page 13 lines 1 and 2,** The Riverside property was owned  
7 by the Corporation. Transferring property from the Corporation is a  
8 taxable event. The property could not be distributed in undivided  
9 interests as this would trigger taxes at both the corporate and the  
10 trust levels with no funds generated to pay them. I do not believe  
11 that the brothers or their attorneys ever understood the tax situation  
12 and it appears to me that the Petitioner in the instant action doesn't  
13 either. It just was not that simple. Also, distributing property in  
14 undivided interests, especially in a situation like this seriously  
15 reduces the value of the property.

16 In 2005 I switched the Corporation from a C corporation to an S,  
17 designation as tax planning going forward.

18 KB Home had purchased up to the Riverside parcel lot line. Jane  
19 had the Los Angeles broker call KB Home and offers the property at 4.3  
20 million (end user rate). There was some question as to whether the  
21 property would ultimately be commercial or residential per the master  
22 plan. In this area commercial land is worth twice what residential  
23 property is.

24 Early indicators of the recession were present in the area. KB  
25 Home had inventory and vacant land that exceeded demand. KB Home  
26 passed on the purchase and subsequently sold their property in the  
27 area. Riverside was just not ready to sell, however I continued with  
28 the listing on the property during the administration of the Estate  
and Trusts.

1 **Paragraph 44** This is the petition for First and Final account; Payment  
2 of Executor Fees, Request for Approval of Final Distribution under the  
3 Will and to Close the Probate Estate. The accountings and petition  
4 were pre-approved by the court. We were never actually able to close  
5 the probate because the Brothers keep filing petitions and motions.  
6 The executor's fee is determined by law in a calculation,  
7 it was never paid.

8 **Paragraph 45** Regarding the list of source documents, this was all  
9 responded to by Luce Forward some of the answers were:

10 The Washington Mutual accounts were Andy's accounts for Rowena that I  
11 believe he handled the rent in. I believe he deposited the rent money  
12 and then paid the Beach House expenses. I believe the rent to be  
13 around \$2,000.00 and that the expenses were around \$2,000. I believe  
14 the accounts had some minimal amount of money remaining like a few  
hundred dollars. This is really all I know about it and you would  
have to get the source documents from Andy. I don't think I ever  
asked him anything further on it.

15 This is regarding Louis, \$250. he either owed Mom a little money or  
16 something, I never really determined the source from him. If there  
were paperwork/documents it would be with Louis, I never had any.

17 Andy, who is an attorney, and made renting arrangements with the  
18 tenants, could not locate a lease with the tenants and was not sure  
that there was one.

19 **Paragraph 46** is denied. What discrepancies? It is difficult to  
20 address specific facts because they are not listed.

21 **Paragraph 47 and 48** the Brothers filed 10 21320's, these are  
22 challenges to the Estate Plan, it basically asks the court to  
23 determine if they sue the estate are they going to be disinherited or  
24 not. None of these were granted, except a part of one petition was  
25 reversed on appeal.  
26

27 **Paragraph 49** is denied until I know specifically what letter is being  
28 referred to. All beneficiary questions and requests for information

1 were responded to. I believe the letter addressing source documents  
2 was filed with the court in the 2010 accounting.

3 **Paragraph 50 and 51 and 55** I'm unsure as to the dates of these notices  
4 and it was Chase Bank. Chase had purchased Washington Mutual or in  
5 some other way acquired this loan in Washington Mutual's bankruptcy  
6 proceeding.

7  
8 We had an ongoing dispute over the balance on the loan at the  
9 time of the transfer to Chase; it was never resolved with Chase. The  
10 Beach House was in no danger of being sold. Judge Jessop stated that  
11 he had had some contact with these "notices" in family court and felt  
12 it was no reason to panic. Jane paid the amount requested personally.  
13 Chase also recorded some kind of rescission of the notices.

14 **Paragraph 52 and 53** is denied. I believe the letter addressing source  
15 documents was filed with the court in the 2010 accounting.

16 **Paragraph 54 and 56 and 57 and 58** is denied.

17  
18 In April the Brothers attorney (William Brewer) set a hearing to  
19 remove Jane regarding the Las Vegas taxes. At the court hearing,  
20 Judge Harry Powazak asked me what I was doing about the taxes and I  
21 responded that I was talking to Clark County. He asked me if I was  
22 doing anything else other than talking and I stated "no" because at  
23 that point I wasn't.

24 Judge Powazak asked Mr. Brewer if the Brothers were willing to  
25 pay the taxes and Mr. Brewer responded "no". Judge Powazak responded  
26 by saying "how's removing her going to pay the taxes" and denied their  
27 petition. At some point then the Brothers fired Mr. Brewer.  
28

1           Subsequently, I provided some court paperwork to Clark County  
2           assessor who talked with the Clark County District Attorney (that is  
3           who advises the tax assessor) and they came back with the bankruptcy  
4           to stay the tax situation.

5           Katherine the Co-Trustee of the Family Trust and Officer and  
6           Director of the Corporation was present at the filing of the  
7           bankruptcy and agreed that per an agreement with Clark County this was  
8           the best course of action given the situation as it preserved the  
9           property for the beneficiaries. The failure to pay the taxes was not  
10          from neglect but a lack of funds after the events surrounding the 2007  
11          proposed sale of lots 022, 023 and 024. Jane paid for the bankruptcy  
12          personally. Jane arranged the dismissal with the judge's clerk.

13          No one showed for the Brothers at the next court hearing either  
14          the Brothers pro per or another attorney. Judge Powazak set a CMC for  
15          June 23, 2011 for the Brothers attorney situation to settle.

16          Judge Poazak recused himself on June 21, 2011 and assigned the  
17          case to Judge Cline as he was a good friend of Mr. Dyson's.

18          Judge Cline and Mr. Dyson indicated they knew about the  
19          bankruptcy at the June 23, 2011 court appearance.

20          The June 23, 2011 CMC hearing was the first court appearance for  
21          Mr. Dyson and Judge Cline on the cases. I submitted a CMC statement  
22          which Judge Cline stated he had not read. Mr. Dyson did not submit a  
23          CMC statement or any other documents for the June 23, 2011 hearing.  
24          Judge Cline ran down an agenda of items, including Jane's removal (for  
25          which no petition was pending) for failure to reach on settlement with  
26          the Brothers and there being around \$500,000.00 in attorney fees  
27          (which at the time approximately \$204,000.00 had been paid by the  
28          Trusts and the Brothers owed approximately \$300,000.00 in litigation  
fees)

1 Katherine, the Court of Appeal has spoken, continued on as  
2 Trustee of the B Trust. Whatever Judge Cline had said, as they had  
3 the transcript before them was not enough to remove her.

4 **Paragraph 59** is denied. During the years of administration 30 to 50  
5 thousand dollars a year was spent on CPA's. \$41,000.00 was spent on  
6 the Accountings with Luce Forward to file in the Probate case and send  
7 to the beneficiaries directly on the Trusts and Corporation. CPA's  
8 did all the accounting during the administration period, starting with  
9 reconciling the bank statements up through tax returns. Every month I  
10 turned over the documents to the Accountants, when the brothers made  
11 objections I turned the source documents over to Luce Forward and they  
12 provided them to the Brothers.

13 Attorney's Dyson and Little without Jane's knowledge subpoenaed  
14 all information from the accountants and Banks, including information  
15 that was privileged. Luce Forward gave Attorney's Dyson and Little  
16 the Trust/Estate/Corporation files, EVERYTHING, source documents,  
17 attorney client privileged information, attorney work product. This  
18 after all regularly discoverable information had been provided to the  
19 Brothers either directly to Mr. Brewer, their attorney.

20 Judge Cline asked for original records my attorney took two boxes  
21 of original documents and gave them to Attorney's Dyson and Little on  
22 the record.

23 At one point an attorney at Luce Forward signed a declaration under  
24 penalty of perjury that she personally handed over the discovery at no  
25 charge to the Brothers.

26 Jane requested in writing that a special master be appointed to  
27 control discovery on June 23, 2011, Judge Cline denied the request.

28 **Paragraph 60** Jane agrees that fiduciary duties are owed to all five  
beneficiaries and to the Trustors, Eugene and Rowena (Parents).

1 **Paragraph 61 and 62 is denied in its entirety.**

2 Count Two is denied and the introduction, relevant will and trust  
3 provisions and responses to count one and three are incorporated by  
4 reference; any allegation or act barred by the statute of limitations  
5 is specifically denied on that basis

6 **Paragraphs 63, 64 and 65 are denied in their entirety**

7 Count Three is denied and the introduction, relevant will and trust  
8 provisions and responses to count one and two are incorporated by  
9 reference; any allegation or act barred by the statute of limitations  
10 is specifically denied on that basis

11 The allegations in count three mainly surround two sets of facts:

12 1. Compliance with discovery orders 2. The occupancy and  
13 distribution of the Beach House

14  
15 1. Judge Cline and Mr. Dyson held an Ex Parte hearing on July 12,  
16 2011 at which at which time the court issued orders including  
17 regarding discovery and sanctions. As soon as was practical the  
18 entire order was appealed.

19 Jane complied with the order in that she attended all day  
20 depositions on whatever day Mr. Dyson and Judge Cline set; (as soon as  
21 there was an order) Mr. Dyson and Little showed up at Jane's attorney,  
22 Luce Forward, with the order for Jane and Luce Forward immediately put  
23 an attorney in charge and copied the entire case file (both Trusts,  
24 the Estate, and Corporation) including privileged, attorney-client  
25 documents and attorney work product for all three cases administration  
26 and litigation files since 2004; Jane provided additional discovery to  
27 Mr. Dyson which she took to his office (Jane waited while originals  
28 were copied).

29 Mr. Dyson first appeared in the cases on June 23, 2011, all  
30 discovery had been previously provided to the Brothers previous  
31 counsel, Mr. Brewer, at no expense to the Brothers

32 Jane's understanding is that monetary sanctions under \$5,000. for  
33 discovery can be appealed at the end of the case without posting any  
34 bond. The Trust and Estates pay Jane's expenses as Trustee.  
35 I believe that Mr. Dyson could have been paid at anytime from the  
36 Trusts/Estates. Jane was not a party to the litigation personally.

37 2. The Schooler Brothers had previously requested a "safe harbor" to  
38 demand that Jane should personally pay the Luce Forward litigation  
39 fees (in a surcharge petition or otherwise) the Brothers lost this  
40 21320 at the trial level and also on appeal. However, the Brothers

1 continued to demand that Jane pay the Luce Forward litigation fees  
2 even after the Court of Appeal decision. The Schooler Brothers  
3 disinherited themselves from the Will and Trust of Rowena.

4 In February of 2012 Jane distributed the Beach House to the  
5 remaining beneficiaries. Katherine demanded distribution because of  
6 the pending Federal Indictment of the Schooler Brothers and in light  
7 of the 2009 distribution to the Schooler Brothers.

8 Jane's legal advise was that during an appeal the  
9 Trustee/Personal Representative continues a the fiduciary, although  
10 the court has the power to appoint an interim (with very limited  
11 powers). The court could also have held a hearing to suspend Jane's  
12 powers, however, it did not. Mr. Dyson has already argued to the  
13 Court of Appeal that Jane's powers were suspended and the Court of  
14 Appeal stated they were not.

15 Subsequently, the Interim on the case took possession of the  
16 Beach House from Jane and Katherine in an unlawful detainer action and  
17 sold the Beach House in a "private sale" to a third party. A quiet  
18 title action (Katherine) and appeals regarding possession have been  
19 filed. (Jane) When Mr. Dyson complained to Judge Kelety about this she  
20 stated that they would get to keep the money regardless of the outcome  
21 of the quiet title case.

22 **Paragraph 66** is denied.

23 **Paragraph 67** is denied as above in count one.

24 **Paragraph 68, 69, 70 and 71** is denied. Jane for the June 23, 2011 CMC  
25 hearing requested that a special master be appointed to control  
26 discovery, the request was denied by Judge Cline.

27 As far as Jane knows there was an actual minute order issued on  
28 the June 23, 2011 CMC conference.

29 **Paragraph 71** is denied. Mr. Dyson and Judge Cline in an Ex Parte  
30 hearing appointed Gloria Trumble interim fiduciary, the July 18, 2011  
31 order reads "successor trustee" however it was modified to conform  
32 with the law and probate code in August 2011. Judge Cline did  
33 sanction Jane again ex parte although the discovery had been provided.  
34 Judge Cline also indicated he was going to hold Jane in contempt.

35 **Paragraph 72** is denied. Judge Cline stated he wanted Jane to give the  
36 original Trusts, Will and Deeds to the Interim, but Jane didn't have

1 them, she never did. Jane used copies of the Will and Trusts. All  
2 the property remained in the names of her parents or the title in  
3 which Rowena left it. Jane's attorney subsequently gave Gloria  
4 Trumble on the court record two boxes of miscellaneous original  
5 documents.

6 **Paragraph 73** is denied.

7 After the Court of Appeal ruled that basically the probate code  
8 procedure did not need to be strictly followed regarding the a removal  
9 of a fiduciary and that a fiduciary could be removed for lack of  
10 settlement and attorneys fees, I never represented myself as Trustee  
11 or Personal Representative or "named" Trustee and Personal  
12 Representative again after the court issued the decision of October  
13 24, 2012.

14 **Paragraph 74, 75, 76** is denied. The best evidence of the exact  
15 wording of orders is the order themselves. An appeal is still pending  
16 over the orders of December 2011.

17 An Appeal was filed in the removal of Jane and the appointment of  
18 an Interim Fiduciary. Per Probate Code section 1300 and 1310 the  
19 order of removal and appointment of a successor is stayed pending  
20 appeal. The court modified its previously issued order of July 12,  
21 2011 and July 18, 2011 in August 2011 to conform to Probate Code  
22 Section 1300 and 1310.

23 **Paragraph 77** is denied. Gloria Trumble signed two notes and trust  
24 deeds on the Beach House signing her name as "Personal  
25 Representative", after the Court had modified its order of her  
26 appointment to interim. Most likely she was unable to obtain a loan  
27 as only an interim fiduciary.

28 The loan amount on the notes is \$250,000.00 and \$310,000.00 for a  
total face value \$560,000.00. this far exceeded any debt of the

1 estate. At the time of the first loan Gloria Trumble was an interim  
2 personal representative. Interim fiduciaries have very limited  
3 powers, while an appeal is pending they can act by court order only to  
4 save the estate from loss of property.

5 The only debt of the Estate and Trusts was the small loan on the  
6 Beach House the B Trust and Corporation property was free and clear.  
7 There were property owed but they were being managed and no property  
8 was in danger. The property taxes on the Beach House were only \$2,000.  
9 per year.

10 The Beach House has prop 13 taxes and parent child exclusion. Even if  
11 the taxes were delinquent the county had not filed anything. The  
12 amount of the taxes is very small relative to the value of the Beach  
13 House.

14 Katherine and Jane both strongly objected to the loan situation,  
15 as they were preserving the assets of the Estate in the best interests  
16 of all beneficiaries.

17 The powers of an interim fiduciary are very limited because the  
18 probate code regarding the appointment of successors does not have to  
19 be followed, as it was not in this case.

20 The Court of Appeal has spoken that Katherine continued on as  
21 Trustee of the B Trust and that an appointment of a successor or  
22 interim was improper as to the B Trust.

23 Although, the Beach House did have a mortgage and expenses they  
24 were being paid. Although, I would say the entire situation was ugly  
25 no property was immediately in danger, certainly to the extent of this  
26 large of a loan. The estate and trusts were free and clear, with the  
27 exception of the small mortgage on the Beach House. Property taxes  
28 and expenses are always there, but they were very small, the property

1 taxes with the parent-child exclusion are \$2,000.00 per year, so even  
2 if they were never paid, it would not have amounted to much money.

3 At this point, the expenses/taxes were being paid by Katherine or  
4 Jane or managed by them, so as to preserve all Estate/Trusts property  
5 for all the beneficiaries.

6 The probate code limits the purposes for which borrowed money can  
7 be used. Probate funds cannot be loaned or given to any Trust or any  
8 other entity. The only legal way to transfer these funds would be to  
9 either 1. file a first and final account; request final distribution  
10 under the terms of the Will; and request final distribution 2. A  
11 Heggsted Petition that says the Trustor left the property out of her  
12 Trust unintentionally..... A Heggsted petition wasn't even possible  
13 here. Gloria Trumble did not want to provide an accounting because  
14 were intentionally misused and are missing. Gloria Tumble as the  
15 Judge that Judge Cline assigned the case to in the summer of 2012 when  
16 North County San Diego closed its probate department, to close the  
17 probate case without an accounting  
18 and she (Judge Kelety) granted this. Judge Cline retired in 2013.

19 On the second loan the Probate was closed and Gloria Trumble  
20 signed for the loan again as "Personal Representative". If the  
21 Probate is closed obviously there is no longer a personal  
22 representative acting, interim or otherwise. Because the Probate was  
23 closed Gloria Trumble bypassed accounting on the second loan. The  
24 funds obtained have never been accounted for.

25 The borrowing of money was strenuously objected to; as these were  
26 loans at 8% interest, short term and with a short term balloon  
27 payment; basically they endangered the property. Jane and Katherine  
28 also had title to the property at this point.

1 An Appeal is pending over the above listed actions. What would  
2 be accurate to say is the stays are statutory and that Judges Cline  
3 and Kelety did follow the stay.

4 **Paragraph 78** is denied. Jane never did anything that she did not know  
5 that she had the power to do. Her legal advice was that while the  
6 appeal was pending she continued to be the personal representative,  
7 and unless powers were suspended I was still acting. It is unlikely  
8 that the interim could transfer the Beach House even to beneficiaries.

9 The Schooler Brothers has disinherited themselves many times from  
10 the Will and Rowena Trust. The Court of Appeal had already proscribed  
11 the prohibited actions and stated that the No Contest clause acted as  
12 the disinheriting devise. There are no other orders of the court  
13 necessary.

14 Mr. Dyson argued on appeal in the removal appeal that Jane was  
15 suspended; the Court of Appeal rejected this. The appeal over the  
16 deed has not yet been heard.

17 No beneficiary was damaged by the transfer.

18 The year 2012 was the final year of the change of C to S tax  
19 designation for the Corporation and that was the year set by the  
20 Trustee for distribution of any remaining property in the Business.

21 **Paragraph 79** is denied.

22 **Paragraph 80** is denied.

1 IV CONCLUSION

2  
3 The circumstances here are very difficult. Jane as Trustee and  
4 Personal Representative, followed her legal advisors, complied with  
5 fiduciary duties, followed the terms of the Trusts and Will regarding  
6 distribution, and followed the Law and Rulings of the Court. No  
7 Beneficiary was damaged by her actions.

8  
9 Dated: August 31, 2013

10 Respectively Submitted,

11  
12 

13 \_\_\_\_\_  
14 Jane L. Schooler

1 PROOF OF SERVICE

2 In Re the Matter of: Jane L. Schooler Case No 12-0-11554

3

4 I Kellen Kerns declare as follows:

5 I am over the age of eighteen years and I am not a party to this  
6 action.

7

8 On September 3, 2013 I served the following:

9

10 Opposition and Response to NCD

11

12 On the below party below by mail. I deposited in the US mail a copy  
13 with envelope addressed as below with postage prepaid to be delivered  
14 by the US postal service.

15

16 Kimberly G. Anderson, Esq.  
17 Senior Trial Counsel  
18 1149 South Hill Street  
Los Angeles, CA 90015-2299

19

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

22 Kellen M. Kerns  


23

24

25 Executed at Del Mar, California on September 3, 2013

26

27

28