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AUTOPSY OF A TRUSTS AND ESTATES CASE: THE APPELLATE DOCTOR IS IN

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"It's dead Jim." By the time those words are uttered the cause is so lost that even the illustrious Dr. McCoy cannot save the patient.[1] But for front-line trusts and estates litigators, the cause is often not lost; the patient can still be saved. Trial court errors can be corrected on appeal so long as the right groundwork is laid and the right steps are taken. Of course, the opposite is also true. Even the most mundane missteps can be a death knell for a case if not properly addressed at either the trial court or appellate levels. This article discusses the appellate process for trusts and estates litigation matters by examining the steps common to such appeals and highlighting the typical pitfalls. The doctors performing this autopsy are two appellate practitioners[2] with extensive experience litigating trusts and estates appeals.

I. STARTING AT THE END – THE APPELLATE DECISION

Many clients—and some practitioners—believe that an appeal provides a second bite at the legal apple. But as we explain here, that is not quite right. While a direct appeal[3] is an appeal of right[4]—in that the reviewing court must hear it[5]—the reviewing court's viewpoint is quite different from that of the trial court. Practitioners ignoring that reality do so at their client's peril. This concept is particularly important in the area of trusts and estates litigation where many trial court decisions involve an exercise of discretion or turn on factual determinations.

For a recent example of how *not* to present a trusts and estates appeal, look no further than *Pizarro v. Reynoso*,[6] a particularly "acrimonious family squabble . . . over the property of [a] deceased patriarch."[7] On appeal, the losing party sought to reverse the trial court's finding that the trustee acted properly regarding the sale of certain trust property. After three years of contentious appellate litigation, including extensive appellate motion work and full briefing,[8] the Court of Appeal ruled that appellants had "forfeited any and all arguments on appeal as to the merits of the trial court's order."[9] The Court of Appeal reached this seemingly harsh result—effectively ruling against the appellant on all substantive issues without ever reaching those substantive arguments—because the practitioners presenting the appeal had committed two fundamental appellate "no-nos." First, the practitioners failed to adhere to appellate brief formatting guidelines with respect to appropriate headings and presenting their supporting authorities.[10] Second, they failed to accept the trial court's fact findings or prove those findings were erroneous.[11]

As the *Pizarro* opinion notes, the appellant did not fail to present his case. He set forth an introduction, statement of facts, standard of review, a listing of claimed errors, and made extensive legal arguments.[12] But reviewing courts don't view their truth-seeking function in the same way as trial courts. Unlike a trial court, a reviewing court comes to the dispute with the mindset that the litigant has had his or her day in court. The reviewing court will therefore presume the trial court's order is correct unless an appellant affirmatively shows some prejudicial error has occurred.[13] A poor presentation—or even a good one that fails to follow the myriad of appellate rules—can result in the reviewing court affirming the lower court's ruling without ever reaching the substance of the appeal. Indeed, reviewing courts often have little patience for appellants who do not follow procedural and organizational rules: "[j]udges are not like pigs, hunting for truffles buried in briefs."[14]

Even where practitioners follow the many appellate rules, the presumption that the trial court acted correctly permeates nearly every substantive aspect of appeals. One critical area is the standard a reviewing court will use to review claimed errors. The standard of review applied by a reviewing court is critical since the Court of Appeal will affirm an order if it is correct on any basis. "[A] ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason."[15]

II. THE SURGICAL TOOLSET – STANDARDS OF REVIEW

Surgeons are taught "when you hear hoofbeats, think horses not zebras."[16] But how do you discern if it is indeed a zebra, and how do you prepare differently for that reality? Whether the surgeon is operating on a horse, a zebra, or maybe just a stubborn old mule, the rules for curing the poor animal's ills are vastly different. So, too, does the analysis of distinct appellate issues differ.

Like our contrived animal-patients, there are three primary standards of review that dictate how a reviewing court will analyze any appeal. The appellate practitioner must determine, and then apply, the correct standard to demonstrate the existence of any error. The highly deferential "substantial

evidence" test frequently arises in trusts and estates appeals because the issues faced by practitioners in these cases are often fact intensive. In those instances, *any* substantial evidence will support the trial court's ultimate finding. While the standard is often phrased in a deceptively concise manner, a more detailed explanation of the depth of deference associated with this standard can be found in the trust context. In challenging the trial court's factual findings regarding a trustee's accounts in an order for preliminary distribution of trust assets, the court explained the "substantial evidence" test as follows:

> The trial court was the trier of fact and the sole judge of the credibility of witnesses. We are not in a position to weigh any conflicts or disputes in the evidence. Even if different inferences can reasonably be drawn from the evidence, we may not substitute our own inferences or deductions for those of the trial court. Our authority begins and ends with a determination of whether, on the entire record, there is any substantial evidence, contradicted or uncontradicted, which will support the judgment. [citations] Therefore, we must consider all of the evidence in the light most favorable to the prevailing party, giving that party the benefit of every reasonable inference from the evidence tending to establish the correctness of the trial court's decision, and resolving conflicts in support of the trial court's decision.[17]

Moreover, where there can be multiple bases for a particular legal finding, the appellant must show an absence of substantial evidence for *each* basis. For example, the oft-litigated issue of undue influence involves a number of different potential avenues for proving the ultimate issue. As one court explains:

> Appellant cannot challenge the court's finding of undue influence by showing only the weakness or absence of evidence of procurement; other factors in combination can also support this finding. To challenge the finding, she must show that the evidence as a whole does not satisfy the general standard for proof of undue influence. We consider that, as a matter of law, her arguments relying exclusively on the one factor of procurement necessarily fail to show a lack of substantial evidence supporting the finding of undue influence.
>
> Our conclusion requires affirmance of the judgment . . . .[18]

The deference afforded the trial court under the substantial evidence standard even extends to the inferences deemed to support a given finding. "For, as has so often been said, when opposing inferences may reasonably be drawn from the facts in a case, the findings of the trial court will not be set aside."[19] This is because the reviewing court will make only the reasonable inference that supports the judgment and ignore the equally reasonable one that does not.[20] Especially in the context of trusts and estates appeals, there are some related concepts that coincide with the substantial evidence test. In evaluating evidence that might support a conclusion, "[t]he weight to be accorded . . . testimony [is] a matter for the trial court to decide."[21] Moreover, and relatedly, the heightened "clear and convincing" standard is intended to guide the trial court "and was not intended as a standard for appellate review."[22] As the California Supreme Court in *Crail v. Blakely* noted, "the trial court reasonably could have concluded that [certain specific] testimony failed to satisfy the 'clear and convincing' standard"; but so long as some other substantial evidence supports the opposite conclusion as well (that the standard *could* be satisfied), the reviewing court must affirm.[23] Put another way, when a finding is made on clear and convincing evidence below, the reviewing court will still analyze the appeal using the basic substantial evidence test.[24] When an order is based on factual findings—as is so often the case in the trusts and estates realm—the substantial evidence standard of review makes the appellant's task quite difficult.

The most deferential "abuse of discretion" standard generally arises when a trial court has discretion to choose between two or more options. Common examples of discretionary rulings would include a court exercising its supervisory powers to surcharge trustee fees,[25] or the evaluation of the condition of an estate for purposes of determining the appropriateness of a preliminary distribution.[26] These types of discretionary decisions will enjoy the benefit of the exceedingly deferential standard on review. Under the "abuse of discretion" standard of review, a reviewing court will disturb the trial court's rulings only upon a showing of "a clear case of abuse" and "a miscarriage of justice."[27] The California Supreme Court recently clarified this standard noting: "[t]he discretion of a trial judge is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal where no reasonable basis for the action is shown."[28] "The scope of discretion always resides in the particular law being applied, i.e., in the 'legal principles governing the subject of [the] action . . . .' Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an 'abuse' of discretion."[29] Of course,

even discretionary questions can have distinct legal and factual components within them. Such fact components are still analyzed under the substantial evidence test, while the legal ones are reviewed anew (as discussed below), leaving the application of fact to law as the truly discretionary portion that enjoys a proper abuse of discretion standard.[30]

The least deferential standard employed by a reviewing court is the *de novo* standard, employed for pure legal issues involving neither discretion nor fact issues. For example, this standard would be applied in the interpretation of a trust document involving no conflicting evidence (such as where no extrinsic evidence is presented).[31] The *de novo* standard is the only standard where *no* deference is afforded to the trial court's decision. In the trust interpretation setting, with no conflicting evidence, the appellate court will act just as the trial court did in analyzing the text "considering the circumstances under which the document was made in order to place [itself] in the position of the trustor to interpret the document."[32]

Finally, though not truly a standard of review because it precludes review, it is worth noting that a trial court's determination of witness credibility *cannot* be reviewed on appeal. Thus, if the question turns on witness credibility, it must be affirmed. In one such instance, the reviewing court explained this complete deference as based on the trial judge's exclusive ability to observe the "[d]efendant's demeanor on the stand, his appearance and his manner of giving testimony [that] may have been sufficient to convince the trial judge of the defendant's honesty, integrity and the truthfulness of his testimony."[33] This rule may seem harsh, but it is logical since a reviewing court has "nothing but the cold, unadorned words on the pages of the reporter's transcript"[34] on which to base its decision, while the trial judge has the benefit of peering into the alleged prevaricator's eyes.

III. PREPPING THE SURGICAL FIELD – PRESERVING OR AVOIDING A RECORD

Hours into surgery, an unforeseen complication arises. As the surgeon pulls apart the muscle and tissue to expose the right patella, she does not see the crack in the bone that triggered the need for the knee surgery. By the time she reads through the surgery prep notes and locates the entry that incorrectly identified the right knee rather than the left one, all that is left to do is close up the patient's left leg. The surgeon cannot simply cut open the right leg because it has not been cleaned, dressed, or prepared for surgery. It is too late to start over.

So, too, an appellate practitioner who lands the improperly prepared appellate record might have little to do except apologize profusely to the client. Without a proper record for the Court of Appeal to scrutinize, even if the proper standard of review could point to a prejudicial error, and even with a well-crafted and organized brief, the reviewing court could be powerless to act.[35] While there are a myriad of issues related to the preservation of an issue for appellate review, we will address four critical concepts common to trusts and estates litigation.

A. Statements of Decision

In an appeal from a judgment following a court trial, perhaps the most important document (other than the judgment itself) is the court's statement of decision. Properly obtaining one is also perhaps the most misunderstood process in litigation. "A proper statement of decision is essential to effective appellate review" because, within certain confining rules, it explains what the trial court did and did not decide.[36] In jury trials, the parties' view of the controverted issues and applicable law comes into sharp focus when settling jury instructions; in a court-tried case, the statement of decision performs that function.[37]

In essence, a statement of decision "explains the factual and legal bases for the trial court's decision in a nonjury trial."[38] A party is entitled to a statement of decision only when one is timely requested; otherwise, a statement of decision may or may not be issued, at the court's discretion.[39] However, if a statement of decision is timely requested, the trial court must render one.[40] For the trusts and estates practitioner, the ability to request a statement of decision on a court-tried issue of fact harmonizes with the ability to request an evidentiary hearing (i.e., a court trial) on contested petitions. A timely request for an evidentiary hearing and a timely request for a statement of decision ensure both that fact issues are tried in accordance with due process,[41] and that the reviewing courts have an adequate record to review the sufficiency of the evidence and the rationale behind those decisions.

The relatively simple definition of a statement of decision masks the complexities inherent in the process of obtaining and challenging one. Generally speaking, Code of Civil Procedure sections 632 and 634, as well as California Rules of Court, rule 3.1590, govern the timing and content of statements of decision.[42] Under these rules, the court should issue a tentative ruling and then parties can request a statement of decision by specifying controverted issues.[43] The court should then issue a proposed statement of decision, to which the parties can file objections raising ambiguities or omissions.[44] Here, terminology can be crucial. A court must issue a "tentative decision" whenever there is a "trial of a question of fact by

the court."[45] But to trigger a trial court's duty to render a "statement of decision," the party must timely request one.[46]

Both the timing and procedure for requesting a statement of decision depend on the length of trial. If the trial concludes the same day it starts—or if it spans multiple days but collectively consumes fewer than eight hours of court time—then the party must request a statement of decision *before* submission of the question to the court.[47] Since many trusts and estates "trials" are short, litigators are wise to know these rules. A litigant who waits for a tentative decision before requesting a statement of decision does so at his or her own peril. Indeed, it is entirely possible for the court to take a "short-cause" trial under submission and issue a tentative decision via a minute order at a later date, at which point it is too late to request a statement of decision.[48]

The burden is lighter for litigants in trials consuming more than one full day. There, a party who wants a statement of decision must still timely and properly request one, but the timing is straightforward: it must be done within 10 days of the court's tentative decision.[49] Whether a single day trial or one that spans multiple days, the failure to timely request a statement of decision waives the right to receive one.[50]

A proper request must "specify those controverted issues as to which the party is requesting a statement of decision."[51] The statutory phrase "*shall specify those controverted issues*" requires more specificity than a broad reference to the competing pleadings (e.g., "we request a statement of decision on the allegations of the petition and objection") to satisfy a party's obligations under Section 632.[52] However, the specificity requirement does not transform a litigant's right to a statement of decision into an unbounded "Q&A" session with the trial judge over every piece of evidence. To comply with the statement of decision requirements, the trial judge need only make determinations with respect to "ultimate facts."[53] Ultimate facts are those facts essential to the claim or judgment, as distinguished from evidentiary facts that "add nothing of value and [whose inclusion in a statement of decision] would needlessly embellish the structure of the findings with rococo details."[54]

Code of Civil Procedure section 634 governs objections to the statement of decision. *After* the court has issued some statement of decision, but *before* entry of judgment (or in connection with a motion for new trial or a motion to vacate), a party can raise omissions and ambiguities in the statement of decision.[55] This gives the trial court the opportunity to supplement or clarify its statement of decision before an appeal is taken.[56] Again, the trial court need not affirmatively respond to each omission or ambiguity raised or, as one court phrased, "a court is not expected to make findings with regard to 'detailed evidentiary facts or to make minute findings as to individual items of evidence.'"[57]

A potential appellant must scrupulously follow these steps if they wish to avoid the implied-findings doctrine, which provides that "the reviewing court must infer, following a bench trial, that the trial court impliedly made every factual finding necessary to support its decision."[58] Of course, because the Court of Appeal implies findings to support—and never to reverse—the challenged judgment, the doctrine helps the winner and hurts the loser.[59] Typically, then, the losing party wants a statement of decision, and the winner does not. However, as noted, in short-cause cases, the call on whether to request a statement of decision must be made before submission. Submission can, and often does, precede the tentative decision that indicates which way the court is considering ruling, such that a party does not know if it will win or lose before it must request the statement of decision.

Ultimately, whether and how to request a statement of decision is a judgment call. Ideally, the decision of when and how to make the request, what type of statement is sought, and what issues are identified, should be made with an appellate strategy firmly in mind. Of course, the practical realities of short, expedited hearings often mean that the "ideal" is not a reality. Nevertheless, understanding the rules and their practical implications is the only way a trusts and estates litigator can truly exercise that judgment.

B. Court Reporters

While the absence or existence of a particular statement of decision can dramatically affect the chances of success on appeal, the absence of a reporter's transcript or other substitute (such as an agreed statement[60] or settled statement[61]) is commonly lethal to it.[62]

As one Court of Appeal decision noted, "although the cornerstone of appellant's arguments involves what occurred at a November 19, 2007 hearing, appellant has not furnished a reporter's transcript of those proceedings. We must therefore presume that what occurred at the hearing supports the judgment."[63] Indeed, when the court issues a ruling following oral proceedings held without a court reporter, a party seeking to challenge a trial court's ruling faces a somewhat Hobbesian choice: procure an agreed statement (which requires the cooperation of the opponent who just won at trial), move for a settled statement (which is issued by the judge whose decision is being challenged), or hope that the minute order discloses

an erroneous rationale. However, minute orders typically give only a terse statement of the ruling and rarely contain any detailed reasoning or recitation of events. The California Supreme Court readily acknowledges the reality that settled statements do not afford as thorough a review on appeal: "As a general matter, as discussed above, the absence of a reporter will significantly limit the issues that must be resolved on the merits of an appeal."[64]

As a result of sweeping budget cuts to the Judiciary in 2008-2009, the onus is now often on the parties to schedule and pay for court reporting services.[65] Until recently, only criminal and juvenile matters were exempt.[66] On July 5, 2018, the California Supreme Court in *Jameson v. Desta*[67] announced a new requirement for civil matters involving indigent litigants: if the local rules allow litigants to have a court reporter present at cost to the parties, then the court *must* provide one on request for a litigant proceeding *in forma pauperis*.[68] While *Desta* was a civil case, there is no reason to believe that the new rule does not extend to a superior court sitting in probate. In many probate cases, the trial court does not provide an official court reporter for non-trial hearings (e.g., for motion hearings). Practically speaking, these rules mean that trust practitioners must consider the possibility of an appeal *before* their hearing or risk precluding effective review. After *Desta*, trust practitioners facing indigent opponents must take care that any request for a court reporter by the indigent opponent be granted; failure to do so is error and risks reversal of any resulting favorable order.

Although a transcript of proceedings can be crucial in a variety of contexts, it can be particularly crucial when the issue on appeal is the appropriateness of attorney's fees for extraordinary services in probate. *In re Hart's Estate* involved an appellant/executor petitioning for court approval and confirmation of his accounts, including a request for fees for extraordinary services.[69] The probate court, by minute order following hearing, ordered extraordinary fees to be paid in an amount three times greater than that suggested by appellant in his petition.[70] On appeal, and after noting that appellant had failed to provide a reporter's transcript, the reviewing court affirmed the extraordinary fees because "evidence as to those fees presumably having been taken and a determination indicated in the minute order," leaving appellant powerless to say the fees were not at issue or otherwise challenge their propriety.[71]

Put simply, if an appellant wants to challenge what happened at a hearing (for example what evidence was adduced, what objections were made, or what conduct occurred) it is virtually impossible to do so without a record of oral proceedings, and a reporter's transcript is almost always the preferred method of creating the record.[72]

C. Evidentiary Hearings

Like trials, evidentiary hearings can help tease out buried factual and legal issues both for the trier of fact and, if ultimately needed, for the Court of Appeal. Absent waiver by the parties, the Probate Code and established case law provide that a contested petition cannot be decided based on declarations and verified petitions alone; an evidentiary hearing or trial must take place to adjudicate facts consistent with due process.[73] Although the "contested-petition-leads-to-trial" rule is likely well known to most readers of this publication, there are four less-studied aspects of this rule that merit mentioning here, most of which significantly limit its application.

First, the need for an evidentiary hearing stems from due process concerns.[74] In today's Probate Code, section 1046 provides that the court "shall hear and determine" contested issues, "consider evidence presented, and make appropriate orders." In the context of overturning an order removing a named executor without notice or a hearing, the Court in *Estate of Buchman* carefully described a probate litigant's right to due process of law, noting that the "power vested in a judge is to hear and determine, not determine without hearing."[75] The *Estate of Buchman* Court's eloquent description of due process is worth a full read,[76] but suffice here to say that the right is fundamental. Due Process insists on notice and a fair hearing; it eschews "whim, caprice, or will of a judge"; it compels adherence to accepted laws, deliberation, and principles of justice rather than arbitrary judicial absolutism; and it requires the utilization of evidence in the search for truth.[77] For contested petitions in the trusts and estates context, this means that a litigant who demands a trial must be afforded one, or at least a hearing with the trial-like safeguards of cross-examination, meeting opposing evidence, and opposing with one's own evidence.[78] However, as important as the right to an evidentiary hearing is, it is hemmed in by the next three aspects of the rule, which significantly impact the scope of this right.

Although grounded in due process, the right to an evidentiary hearing can be waived. It is effectively waived by failing to object to the court's consideration of affidavits and petitions as evidence.[79] For example, where both sides rely on verified petitions and affidavits, and neither side objects, the loser cannot complain on appeal that the court erred by considering the affidavits as evidence, notwithstanding the clear language of Probate Code section 1022.[80]

Moreover, merely asking for an evidentiary hearing may not be enough in every case. Counsel would be well-advised to identify and demonstrate a factual dispute raised by the competing pleadings. This is because evidentiary hearings exist to adjudicate disputed, material *facts*, rather than a contested application of law to undisputed facts.[81] As the high court observed, "[n]eedless to say, an evidentiary hearing serves no legitimate purpose or function where . . . [the requesting party] has failed to identify a material but contested factual issue that should be resolved through the taking of oral testimony."[82] And, at least in the substituted-judgment context, the trial court is vested with discretion to determine whether it has information sufficient to render a ruling or if it needs an evidentiary hearing.[83] Therefore, the well-prepped practitioner seeking to avoid an immediate adjudication will bring three instruments to any initial hearing: (i) a demand for an evidentiary hearing; (ii) identification of at least one material, disputed fact, and (iii) an argument as to why the court does not have sufficient information before it even to determine whether an evidentiary hearing is necessary. Bringing these three tools maximizes the odds of the probate court declining to rule on a petition without taking evidence. It either shores up any appellate review of an erroneous denial of a properly requested hearing, or resolves the potential error, allowing the litigant to develop the record for a substantive review on appeal.

Finally, even if all of these steps are taken, one must always keep in mind the probate court's equitable origins and its willingness to take interim action to protect the beneficiaries of an estate or trust.[84] In an emergency situation, due process does not prevent probate courts from issuing adverse orders pending full resolution of the dispute. *Schwartz v. Labow*[85] serves as an exemplar. There, a trustee petitioned for approval of his account, which included his request for approval of his payment of trustee's and attorney's fees. The probate court, concerned with the size of the fees relative to the dwindling trust estate, immediately suspended the trustee's powers pending a further hearing on his permanent removal.[86] The trustee challenged this order on appeal, arguing that the probate court lacked jurisdiction to suspend him absent a petition and hearing under Probate Code section 17200.[87] The Court of Appeal affirmed the summary order, noting the "probate court's extensive, general express, and inherent equity powers."[88]

D. Avoiding Waiver

Failing to request a statement of decision, a court reporter, or an evidentiary hearing are examples of the application of the broader doctrine of waiver or forfeiture. In its most basic form, waiver is the voluntary relinquishment of a known right.[89] As related to appeals, waivers are typically grouped into two categories, express and implied.

Perhaps the most obvious express waiver is the stipulation. Although stipulations that amount to mere incorrect legal conclusions may not come back to haunt the litigant on appeal,[90] litigants do have the power to agree—and thus remove from dispute on appeal—to both procedural and substantive issues. For instance, one of the reasons the *Schwartz* trustee failed on appeal was that he affirmatively agreed to the scope of his suspension, removing a substantive issue from his appeal.[91] Reviewing courts also uphold procedural stipulations, such as the stipulated waiver of the right to a jury.[92]

Of course, an express waiver can be accomplished by far less than a formal stipulation. Affirmatively withdrawing an objection, once made, is quintessential express waiver.[93] Indeed, some courts will use mere statements in briefs, if favorable to the other side, as express stipulations on a given point.[94]

As with express waiver, the closely related doctrine of "invited error" will, under certain circumstances, operate to remove an issue from the reviewing court's ambit. Simply stated, when a litigant's conduct is the cause of the trial court's error, the litigant has "invited" the error and cannot complain of it on appeal.[95] This test is easily stated but not easily applied. It is sometimes said that the affirmative conduct acts as an estoppel, thereby preventing the litigant from later claiming error based on that conduct.[96] However, affirmative conduct is not absolutely necessary, as courts may find a party's participation in pre-trial and trial proceedings as inviting the error.[97] The purpose behind the invited error rule is that if litigants were not forced by threat of forfeiture to raise irregularities as they occurred, "the party would in most cases be careful to be silent as to his objections until it would be too late to obviate them, and the result is that few judgments would stand the test of an appeal."[98]

The last and perhaps most amorphous form of express waiver is the theory-of-the-case doctrine. This doctrine holds that "the theory upon which a case is tried must be adhered to on appeal. A party is not permitted to change his [or her] position and adopt a new and different theory on appeal. To permit [doing] so would not only be unfair to the trial court, but manifestly unjust to the opposing litigant."[99] Notwithstanding this injustice, however, courts can entertain different theories on appeal when the new theory presents a

question of pure law to be decided upon undisputed facts.[100] But courts will reject the new theory if a factual conflict material to the theory could have been developed below.

Estate of Collins provides just such an application of the theory-of-the-case doctrine. In *Estate of Collins*, a special administrator sued to cancel a deed that he knew was forged.[101] The special administrator argued at trial that the defendants had unclean hands.[102] The special administrator lost at trial, and the doctrine of unclean hands was applied against him to preclude him from attacking the deed because he had also knowingly benefitted under the forged deed.[103] On appeal, the special administrator argued that the unclean hands doctrine should not be applied against him due to the presence of his purportedly "innocent" heirs who were untainted by the special administrator's bad acts.[104] The special administrator could have added that there were no facts indicating the heirs were aware of his misconduct. The Court of Appeal rejected this new theory, because whether the heirs themselves had clean hands was at least open to controversy, making it unfair to expose the respondents to reversal on an issue that was not raised below.[105]

Implied waivers can be even more dangerous. Typically, an implied waiver occurs where counsel neglects to raise an entire issue in the trial court,[106] or when counsel fails to timely object to an error committed by the trial court.[107] It can also occur when a formal objection is made, but subsequent, inconsistent conduct indicates the objection is withdrawn. For instance, a party who objects unsuccessfully to the introduction of certain evidence must be careful in how that party uses the evidence thereafter. Evidence admitted over objection can be used to explain or contradict the other side's case,[108] but gratuitous use to prove one's own case could be construed as an implied waiver of the prior objection.[109]

Avoiding waiver can be done orally and in writing, as circumstances dictate. At trial, counsel usually makes oral objections when the question is asked or the evidence is offered for admission. But often, the opportunity to object may be less apparent. For example, because trial judges are often reticent to engage in extended argument over admissibility while on the record, many trial judges have adopted a practice of pre-approving exhibits. This process can unfold in the judge's chambers while off the record. While this streamlines trial, it can wreak havoc on an appellate record, especially when the key issues in a case turn on the admissibility of evidence. In such a circumstance, adequate record preservation requires counsel, at the earliest opportunity, to place objections on the record, so that the reviewing court can determine whether admission was appropriate.[110] The careful trusts and estates litigator can—and, if he or she perceives defending or bringing an appeal, must—resort to the most rudimentary form of record keeping. Take careful notes during the in-chambers conference, and at an opportune time, carefully recount for the record the discussions and rulings previously made off-the-record. Barring an unrealistically dutiful clerk or court, this is the *only* way any in-chambers error (or activity precluding assignment of error) can be preserved for appellate review.

For motions, written objections take on great importance. In trial-replacement motions, such as motions for summary judgment, making and responding to evidentiary objections is essential.[111] With respect to summary judgment, evidentiary objections must comply with specific statutory requirements on timing and format.[112] But it is a good practice to adopt those requirements for all written objections because they are designed to organize evidentiary issues for the trial court and effectively preserve issues on appeal.

IV. SPOTTING THE PATIENT – RECOGNIZING AN APPELLATE ISSUE

Is the woman who just walked into the surgeon's office complaining of stomach pain merely the overly-adventurous victim of the local burrito truck, or is she dying of a heart attack? Is the child who seems slow to respond to stimuli suffering from a rare neurological impairment, or did he just miss his nap? Sometimes identifying the patient is half the problem.

The right to appeal is governed by statute.[113] In civil actions, the touchstone statute is Code of Civil Procedure section 904.1, which defines appealable orders. Generally speaking, a civil litigant can only appeal final judgments and orders issued after a final judgment.[114] However, Code of Civil Procedure section 904.1, subdivision (10), allows for the appeal of "any order made appealable by the Probate Code."[115] The Probate Code statutes governing the right to appeal are found in Sections 1300 *et seq.* Under Probate Code section 1300, an appeal may be taken from the court's making, or refusal to make, the following orders:

- "Directing, authorizing, approving, or confirming the sale, lease, encumbrance, grant of an option, purchase, conveyance, or exchange of property.
- Settling the account of a fiduciary.
- Authorizing, instructing or directing a fiduciary, or approving or confirming the acts of a fiduciary.

- Directing or allowing payment of a debt, claim, or cost.
- Fixing, authorizing, or allowing payment of the compensation or expenses of a fiduciary.
- Surcharging, removing, or discharging a fiduciary.
- Transferring the property of the estate to a fiduciary in another jurisdiction.
- Discharging the surety on the bond of a fiduciary.
- Adjudicating the merits of a [Probate Code section 850] claim."[116]

Also, under Probate Code section 1304, most final orders granting or denying a petition brought under Section 17200 are appealable. The list of orders found in the Probate Code is exclusive.[117]

Knowing whether a given order is appealable is absolutely critical because "if an order is appealable, appeal must be taken or the right to appellate review is forfeited."[118] *Murphy v. Murphy*[119] illustrates just how harshly this rule can operate. In *Murphy*, son believed his father and mother had agreed (contracted) to mutual wills leaving all their property equally to their son and daughter.[120] Towards the end of his life, the father was subject to conservatorship proceedings which included a substituted judgment proceeding.[121] In that proceeding, the probate court directed the temporary conservator to execute an estate plan disinheriting son.[122] After father's death, son sued his sister to impose a constructive trust over the property he felt should have descended to him.[123] The son won at trial, proving—by clear and convincing evidence, no less—that father had in fact entered into the contract, that mother had relied on it, and that mother's reliance on that agreement would result in "unconscionable injury" to son.[124] But the Court of Appeal reversed on preclusion grounds, finding the order for substituted judgment was appealable, and the son did not appeal the order.[125] Collateral estoppel now barred the son from re-litigating the issues that could have been decided in the substituted judgment proceedings.[126] His failure to appeal an appealable order likely cost him his inheritance.

The other side of the probate-exclusivity rule operates far more benignly. In probate disputes, orders that are otherwise appealable in civil actions (e.g., an order denying a Code of Civil Procedure section 473 motion to vacate) are *not* appealable for the simple reason that they are not listed in Probate Code section 1300 *et seq.*[127] It operates benignly because appealing a non-appealable order results in a wasted filing fee, the unlikely imposition of sanctions, and the likely "ribbing" from one's colleagues, but not substantive procedural forfeiture.[128]

The Probate Code also provides for slightly different rules that operate during the pendency of appeals. The most significant is found in Probate Code section 1310, subdivision (b). Under that statute, if the probate court finds there is an extraordinary risk of injury or loss, such an order is not stayed by an appeal, and acts taken pursuant to that order are valid, regardless of the outcome of the appeal.[129] Although the risk of loss can be solely monetary, courts are cautioned not to exercise the power outside of "exceptional" cases.[130]

V. THE CORONER'S REPORT – CONCLUSION

"My God man, drilling holes in his head is not the answer! . . . Now, put away your butcher's knives and let me save this patient before it's too late!"[131] Appellate rules can be harsh and unforgiving, but with some forethought and preparation you too can swoop in to save the patient, just like the illustrious Dr. McCoy. Identify what parts of your trusts and estates case are appealable; preserve your record by avoiding waiver; secure a reporter's transcript and craft a proper statement of decision if it benefits your client; and evaluate your position based on the proper standard of review. These basic concepts will help the trusts and estates litigator represent his or her client well at trial and ensure that if an appellate issue exists, it can be well presented on appeal. This will allow appellate counsel to ensure that the remaining appellate rules and customs are observed, and the client's appealable issues can properly be presented to the reviewing court.

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1 The catch phrase stems from an oft-repeated line from the original Star Trek series by fictional character Dr. Leonard "Bones" McCoy. (Porter and McLaren, Star Trek and Sacred Ground: Explorations of Star Trek, Religion, and American Culture (1999) p. 127.)

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3 As the Supreme Court has done, when the distinction is relevant we refer to "direct appeals" as those reviewing statutorily enumerated, final, appealable, orders, while we refer more broadly to "appeals" as the process of review encompassing *both* discretionary writ review and direct appeals. (*Powers v. City of Richmond* (1995) 10 Cal.4th 85.) This article primarily focuses on direct appeals, but many of its teachings are equally applicable to discretionary writ petitions.

4 The term "appeal of right" is itself somewhat misleading. "There is no constitutional right to an appeal; the appellate procedure is

entirely statutory and subject to complete legislative control." (*Trede v. Superior Court* (1943) 21 Cal.2d 630, 634; *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 104 (The constitutionally protected "right to appeal" affords only some "right to some effective procedural vehicle by which to invoke the constitutionally conferred appellate jurisdiction"; the procedural vehicle itself is for the legislature to decide).)

5 ". . . [A] direct appeal guarantees a decision on the merits." (*Powers v. City of Richmond, supra,* 10 Cal.4th at p. 113.)

6 *Pizarro v. Reynoso* (2017) 10 Cal.App.5th 172.

7 *Id.* at p. 175.

8 Court docket: Pizarro v. Reynoso, as Trustee, etc., et al., C077594. Westlaw retrieval service current through 5/4/2017. Last accessed on April 18, 2018.

9 *Pizarro v. Reynoso, supra,* 10 Cal.App.5th at 183.

10 *Id.* at pp.180-182.

11 *Id.* at pp. 182-183. The importance of standards of review and their applicability to factual findings is addressed below.

12 *Pizarro v. Reynoso, supra,* 10 Cal.App.5th at pp. 180-181.

13 *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (judgment of lower court presumed correct; error must be affirmatively shown).

14 *Ingrande v. Home Depot U.S.A., Inc.* 2016 WL 703601, at *6, as modified Feb. 29, 2016, citing *United States v. Dunkel* (7th Cir. 1991) 927 F.2d 955, 956; see also *Sprague v. Equifax, Inc.* (1985) 166 CalApp.3d 1012, 1050.

15 *David v. Hermann* (2005) 129 Cal.App.4th 672, 685, relying on *Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329.

16 The phrase "when you hear hoofbeats, think of horses not zebras" is widely believed to be advice to medical interns first offered by Dr. Theodore Woodward, professor at the University of Maryland School of Medicine. See Sotos, John G, Zebra Cards: An Aid to Obscure Diagnosis (1991).

17 *Estate of Beard* (1999) 71 Cal.App.4th 753, 778-79 (affirming preliminary order of distribution); see also *Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 697; *Estate of Teel* (1944) 25 Cal.2d 520, 526-527; *Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.

18 *David v. Hermann, supra,* 129 Cal.App.4th at pp. 684-685.

19 *McIntyre v. Doe & Roe* (1954) 125 Cal.App.2d 285, 287, citing *Estate of Bristol* (1943) 23 Cal.2d 221.

20 *Mah See v. North American Accident Insurance Co.* (1923) 190 Cal. 421, 426, citing *Woodard v. Glenwood Lumber Co.* (1915) 171 Cal. 513, 519 ("In so far as the evidence is subject to opposing inferences, it must upon a review thereof be regarded in the light most favorable to support the judgment."); *Bancroft-Whitney Co. v. Glen* (1966) 64 Cal.2d 327, 348 ("[W]hen either one of two inferences may fairly be deduced from the evidence, an appellate court must accept the inference which will be favorable to the judgment").

21 *Crail v. Blakely* (1973) 8 Cal.3d 744, 749, citing *Brewer v. Simpson* (1960) 53 Cal.2d 567, 587-588 (affirming trial court's determination regarding agreement to make a will).

22 *Id.* at p. 750 ("if there is substantial evidence to support [the trial court's] conclusion [that the clear and convincing standard was satisfied], the determination is not open to review on appeal.").

23 *Ibid.* (affirming trial court's finding that dubious oral testimony satisfied clear and convincing standard for proof of an oral agreement to make a will).

24 *In re Marriage of Ruelas* (2007) 154 Cal.App.4th 339, 345 ("The standard of review on appeal remains the same whether the normal 'preponderance of the evidence' standard or the higher 'clear and convincing evidence' standard applied in the proceedings below.").

25 *Estate of Moore* (2015) 240 Cal.App.4th 1101, 1105, citing *Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 268-269. Although outside the scope of this article (because the issue is not specific to trusts and estates litigation) it is noteworthy that courts commonly apply the same standard for evidentiary rulings.

26 *Estate of Beard, supra,* 71 Cal.App.4th at p. 780. Note, however, that fact determinations within that same issue will be evaluated under the substantial evidence test discussed above.

27 *Blank v. Kirwan* (1985) 39 Cal.3d 311, 331, quoting *Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.

28 *Sargon Enterprises, Inc. v. University of Southern Cal.* (2012) 55 Cal.4th 747, 773.

29 *Ibid.*, quoting *City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297-1298.

30 *Verizon Cal. Inc. v. Board of Equalization* (2014) 230 Cal.App.4th 666, 680, quoting *Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711-712 ("The trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.").

31 *Estate of Cairns* (2010) 188 Cal.App.4th 937, 944.

32 *Ibid.*, quoting *McIndoe v. Olivos* (2005) 132 Cal.App.4th 483, 487.

33 *Menning v. Sourisseau* (1933) 128 Cal.App. 635, 639.

34 *Escobar v. Flores* (2010) 183 Cal.App.4th 737, 749.

35 *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575; *Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039, citing *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296 ("in the absence of a required reporter's transcript and other documents, we presume the judgment is correct.").

36 *Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 982.

37 *Ibid.*

38 *Uzyel v. Kadisha* (2010) 188 Cal.App.4th 866, 896.

39 Code Civ. Proc., section 632.

40 *Karlsen v. Superior Court* (2006) 139 Cal.App.4th 1526, 1530-1531, citing *Whittington v. McKinney* (1991) 234 Cal.App.3d 123, 126-127.

41 See Section III.C, *post.*

42 Code Civ. Proc., sections 632 and 634; Cal. Rules of Court, rule 3.1590; *Thompson v. Asimos, supra,* 6 Cal.App.5th at p. 982.

43 Cal. Rules of Court, rule 3.1590(d).

44 *Thompson v. Asimos, supra,* 6 Cal.App.5th at p. 983, relying on Code Civ. Proc, section 634. Interestingly, the term "objection" is not used in Sections 632 or 634 or the Code of Civil Procedure; that word is only found in the Rules of Court.

45 Cal. Rules of Court, rule 3.1590(a).

46 Code Civ. Proc., sections 632 and 634.

47 Code Civ. Proc., section 632.

48 *Ibid.*

49 Code Civ. Proc., section 632; Cal. Rules of Court, rule 3.1590(d). This is likely expanded to 15 days where the court mails its tentative decision and states that its tentative decision will become its statement of decision absent objection. (Cal Rules of Court, rules 3.1590(c)(1) and 3.1590(g).)

50 Code Civ. Proc., section 632. Of course, a trial court always has discretion to issue a statement of decision. But practically speaking, that decision is unlikely.

51 Code Civ. Proc., section 632.

52 *Ibid.*; *Thompson v. Asimos, supra,* 6 Cal.App.5th at p. 979, fn. 2 (request for statement of decision "addressing claims alleged in the complaint and cross-complaint, without specifying any particular issue[]" fails to constitute a proper request under Section 632).

53 See *Central Valley General Hospital v. Smith* (2008) 162 Cal.App.4th 501, 513.

54 *Lewetzo v. Sapiro* (1961) 188 Cal.App.2d 841, 845.

55 Code Civ. Proc., section 634.

56 *Uzyel v. Kadisha, supra,* 188 Cal.App.4th at pp. 896-897.

57 *Thompson v. Asimos, supra,* 6 Cal.App.5th at 983 (quoting and citing *Nunes Turfgrass, Inc. v. Vaughan-Jacklin Seed Co.* (1988) 200 Cal. App.3d 1518, 1525.

58 *Thompson v. Asimos, supra,* 6 Cal.App.5th at p. 981.

59 *Fladeboe v. American Isuzo Motors, Inc.* (2007) 150 Cal.App.4th 42, 48.

60 An agreed statement is a stipulation between the parties reciting the "the nature of the action, the reviewing court's jurisdiction, and how the superior court decided the points to be raised on appeal." (Cal. Rules of Court, rule 8.134(a).) Notably, agreed statements are often poor substitutes for a reporter's transcript because the prevailing party at trial must agree to the contents of an agreed statement attacking the very ruling that party just won.

61 A settled statement is similar to an agreed statement in that it is a shortened narrative of oral proceedings used in lieu of a reporter's transcript. (Cal. Rules of Court, rule 8.137.) And use of a settled statement in lieu of a reporter's transcript is less than ideal, because the statement is "settled" oftentimes by the very judge who is about to be appealed. The agreed statement and the settled statement differ in that the former involves only the parties, while the latter requires a court ruling.

62 *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1200-1201.

63 *Ibid.*

64 *Jameson v. Desta* (2018) 420 P.3d 746, 764, fn. 20.

65 See Cal. Rules of Court, rule 2.956.

66 Cal. Rules of Court, rule 2.956(e)(1).

67 *Jameson v. Desta, supra,* 420 P.3d 746.

68 *Id.* at 749.

69 *Estate of Hart* (1959) 167 Cal.App.2d 499, 501.

70 *Id.* at p. 504.

71 *Id.* at p. 505.

72 See notes 60 (agreed statements) and 61 (settled statements), *ante.* These can also be used in the event that an obstreperous party refuses to stipulate to a paid court reporter hired by a particular party. See Cal. Rules of Court, rule 2.956.

73 Prob. Code, sections 1000, 1022, and 1046; *Estate of Lensch* (2009) 177 Cal.App.4th 667, 675-678 (order granting contested petition without evidentiary hearing reversed); *see also Evangelho v. Presoto* (1998) 67 Cal.App.4th 615, 620; *Estate of Buchman* (1954) 123 Cal. App.2d 546, 560.

74 *Estate of Buchman, supra,* 123 Cal.App.2d at pp. 560-561.

75 *Id.* at p. 560.

76 "The fundamental conception of a court of justice is condemnation only after notice and hearing. No one may be deprived of anything which is his to enjoy until he shall have been divested thereof by and according to law. Under the constitutional guarantees no right of an individual, valuable to him pecuniarily or otherwise, can be justly taken away without its being done conformably to the principles of justice which afford due process of law . . . . Due process of law does not mean according to the whim, caprice, or will of a judge, [citation]; it means according to law. It excludes all arbitrary dealings with persons or property. It shuts out all interference not according to established principles of justice, one of them being the right and opportunity for a hearing: to cross-examine, to meet opposing evidence, and to oppose with evidence. [Citation.]

Judicial absolutism is not part of the American way of life. The odious doctrine that the end justifies the means does not prevail in our system for the administration of justice. The power vested in a judge is to hear and determine, not to determine without hearing. When the Constitution requires a hearing, it requires a fair one, one before a tribunal which meets established standards of procedure. It is not for nothing that most of the provisions of the Bill of Rights have to do with matters of procedure. Procedure is the fair, orderly, and deliberate method by which matters are litigated. To judge in a contested proceeding implies the hearing of evidence from both sides in open court, a comparison of the merits of each side, a conclusion from the evidence of where the truth lies, application of the appropriate laws to the facts found, and the rendition of a judgment accordingly." (*Id.* at pp. 559-560.)

77 *Id.* at p. 560.

78 *Ibid.*; Prob. Code, sections 1000, 1022, and 1046.

79 *Evangelho v. Presoto, supra,* 67 Cal.App.4th at pp. 620-621.

80 *Ibid.*

81 See Code Civ. Proc., section 437c; see Prob. Code, section 1000 (incorporating rules of civil practice where no specific Probate Code statute provides another procedure).

82 In re Marriage of Brown & Yana (2006) 37 Cal.4th 947, 962.

83 *Conservatorship of McElroy* (2002) 104 Cal.App.4th 536, 554, quoting *Conservatorship of Hart* (1991) 228 Cal.App.3d 1244, 1266.

84 See, e.g., Prob. Code, section 15642, subd. (e); *Schwartz v. Labow* (2008) 164 Cal.App.4th 417, 429-430.

85 *Schwartz v. Labow* (2008) 164 Cal.App.4th 417.

86 *Id.* at p. 423.

87 *Id.* at pp. 425-426.

88 *Id.* at p. 429.

89 See, e.g., *Roesch v. De Mota* (1944) 24 Cal.2d 563, 572 ("Waiver is the intentional relinquishment of a known right after knowledge of the facts.").

90 *Burrows v. State* (1968) 260 Cal.App.2d 29, 33 (disregarding stipulation that "is nothing but an erroneous legal conclusion which the trial court should not have accepted. [citations].").

91 *Schwartz v. Labow, supra,* 164 Cal.App.4th at p. 430.

92 See, e.g., *People v. Blackburn* (2015) 61 Cal.4th 1113, 1124 (describing counsel's typical authority to bind client in waiving matters of procedure).

93 See, e.g., *Buchanan v. Nye* (1954) 128 Cal.App.2d 582, 586-587.

94 See *Estate of Kretschmer* (1965) 232 Cal.App.2d 789, 790 ("Each party has added some flesh to the skeleton [record] in the form of statements of fact in briefs. We are disposed to regard these statements as stipulations in so far as they may be helpful to the adversary of the one making them . . . .").

95 *Telles Transport, Inc. v. Workers' Compensation Appeals Board* (2001) 92 Cal.App.4th 1159, 1167.

96 See *Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 420-421 ("[P]laintiffs are estopped to complain of the trial court's error because they participated in its commission.").

97 See *Harnedy v. Whitty* (2003) 110 Cal.App.4th 1333, 1345.

98 *People v. Simon* (2001) 25 Cal.4th 1082, 1103 (internal quotation marks and citations omitted).

99 *Richmond v. Dart Industries, Inc.* (1987) 196 Cal.App.3d 869, 874.

100 *Cal. Sierra Construction, Inc. v. Comerica Bank* (2012) 206 Cal. App.4th 841, 850-851.

101 *Estates of Collins & Flowers* (2012) 205 Cal.App.4th 1238, 1242.

102 *Ibid.*

103 *Ibid.*

104 *Id.* at pp. 1256-1257.

105 *Id.* at 1256.

106 See *Doers v. Golden Gate Bridge, Highway & Transportation District* (1979) 23 Cal.3d 180, 184-185.

107 See, e.g. *Martorana v. Marlin & Saltzman* (2009) 175 Cal.App.4th 685, 699-700; see also, Evid. Code, section 353, subd. (a).

108 See *Warner Construction Corp. v. City of Los Angeles* (1970) 2 Cal.3d 285, 299, fn. 17.

109 *Heiman v. Market Street Railway Co.* (1937) 21 Cal.App.2d 311, 315.

110 See *People v. Tuggles* (2009) 179 Cal.App.4th 339, 355-356.

111 *In re Oracle Corp. Securities Litigation* (9th Cir. 2010) 627 F.3d 376, 386-386.

112 Code Civ. Proc., section 437c; Cal. Rules of Court, rule. 3.1354.

113 *Leone v. Medical Board* (2000) 22 Cal.4th 660, 668.

114 Code Civ. Proc., section 940.1.

115 *Id.* at subd. (10).

116 Prob. Code, section 1300.

117 *Kalenian v. Insen* (2014) 225 Cal.App.4th 569, 575-576; see also, *Estate of Stoddart* (2004) 115 Cal.App.4th 1118, 1126 ("There is no right to appeal from any orders in probate except those specified in the Probate Code.").

118 *In re Baycol Cases I and II* (2011) 51 Cal.4th 751, 762, fn. 8.

119 *Murphy v. Murphy* (2008) 164 Cal.App.4th 376.

120 *Id.* at p. 392.

121 *Id.* at pp. 390-391.

122 *Id.* at p. 391.

123 *Id.* at p. 392.

124 *Id.* at pp. 393-394.

125 *Id.* at pp. 408-409.

126 *Ibid.*

127 *Kalenian v. Insen, supra,* 225 Cal.App.4th at p. 576.

128 *Jennings v. Marralle* (1994) 8 Cal.4th 121, 126 (appeal from nonappealable order dismissed by court on own motion).

129 Prob. Code, section 1310, subd. (b); *Kane v. Superior Court* (1995) 37 Cal.App.4th 1577, 1586.

130 *Sterling v. Sterling* (2015) 242 Cal.App.4th 185, 198-199 (finding that the circumstances in that case were "extraordinary").

131 Star Trek IV: The Voyage Home. (Paramount Pictures 1986) The quote can be found online at http://www.imdb.com/title/tt0092007/quotes (last accessed April 18, 2018.)