

STATE OF LOUISIANA * PARISH OF FRANKLIN
FIFTH JUDICIAL DISTRICT COURT

SUCCESSION OF

PEGGY MARIE McDOWELL TRAYLOR

FILED:

PROBATE DOCKET NO.: 41,291

DEPUTY CLERK OF COURT

**MOTION TO REMOVE SUCCESSION REPRESENTATIVES
AND TERMINATE INDEPENDENT ADMINISTRATION AND,
IN THE ALTERNATIVE, TO REQUIRE AN ADMINISTRATOR INVENTORY,
USUFRUCTORY POSSESSION, INTERIM ACCOUNTING, AND OTHER RELIEF**

NOW INTO COURT, thorough undersigned counsel, comes Judge Chet Traylor, retired, the surviving spouse of Peggy Marie McDowell Traylor, who moves this Honorable Court, for the reasons more fully set forth in the attached memorandum in support, for an order removing Noble Edward Ellington, III and Fred Ryan Ellington as the Independent Co-Administrators of the estate of Peggy Marie McDowell Traylor pursuant to La. C.C.P. Arts. 3396.8 and 3396.20. Accordingly, the undersigned respectfully prays that an order be entered removing Noble Edward Ellington, III and Fred Ryan Ellington as Independent Co-Administrators of the estate of Peggy Marie McDowell Traylor and, in the alternative, for an order requiring an interim administrator inventory, usufructory possession, interim accounting, and other relief as more fully set forth in the attached memorandum in support.

Respectfully submitted,

McNEW, KING, MILLS, BURCH & LANDRY, LLP
2400 Forsythe Avenue, Suite 2
Monroe, LA 71201

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Facsimile: (318) 361-3141
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Brady D. King, II (#18288)
ATTORNEYS FOR JUDGE CHET TRAYLOR,
RETIRED

CERTIFICATE

I, BRADY D. KING, II, HEREBY CERTIFY that a copy of the above and foregoing has been served on all counsel of record by facsimile, electronic mail or by placing a copy of same in the United States Mail, properly addressed and with adequate postage affixed thereon to:

Paul Spillers
Theus, Grisham, Davis & Leigh, L.L.P.
1600 Lamy Lane
Monroe, LA 71201

Monroe, Louisiana, this 30th day of July, 2010.



OF COUNSEL

STATE OF LOUISIANA * PARISH OF FRANKLIN
FIFTH JUDICIAL DISTRICT COURT

SUCCESSION OF
PEGGY MARIE McDOWELL
TRAYLOR

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MEMORANDUM IN SUPPORT

MAY IT PLEASE THE COURT:

Judge Chet Traylor, retired, is the surviving spouse of Peggy Marie McDowell Traylor. At the time of her death, the two were lawfully married and maintained three homes and had acquired community property. At Mrs. Traylor's death, she had two living, major sons, Noble Edward Ellington, III and Fred Ryan Ellington. Mrs. Traylor died *intestate*. Judge Chet Traylor, retired, is provided a usufruct by operation of law over all community property pursuant to La. C.C.P. Art. 890.

In February 2010, Noble Edward Ellington, III and Fred Ryan Ellington petitioned the court to order the independent administration of the succession of Peggy Marie McDowell Traylor and for their appointment as the Independent Co-Administrators of the estate of Peggy Marie McDowell Traylor. Judge Traylor, retired, did not consent or agree to the independent administration of the succession of Peggy Marie McDowell Traylor or to the appointment of Noble Edward Ellington, III and Fred Ryan Ellington as its independent administrators.

Upon information and belief, the failure to seek his concurrence and the lack of concurrence now precludes the independent administration of the succession of Peggy Marie McDowell Traylor. La. C.C.P. Art. 3396.8 states as follows:

When the testament creates a usufruct and concurrence and concurrence in having an independent administration is required, or when the usufruct arises by operation of law, the concurrence of the usufruct and the naked owner is required.

As the current co-administrators did not seek Judge Traylor's, retired, concurrence in the independent administration or their appointment as Independent Administrator, nor does Judge Traylor, retired, now concur with the independent

administration of, the succession of Peggy Marie McDowell Traylor, pursuant to La C.C.P. Art. 3396.8, Judge Traylor, retired, seeks the termination of the independent administration of the succession of Peggy Marie McDowell Traylor and the removal of the current co-administrators.

Additionally, the undersigned shows that LA. C.C.P. Art. 3396.20 further provides that administrators may be removed for any reason provided in Book IV for which a succession representative may be removed. In addition that article provides that, on the motion of an interested person, after contradictory hearing, the court may, for good cause, order the letters of independent administration be withdrawn and that the succession thereafter be administered under the procedures set forth elsewhere in Book VI, other than those contained in this chapter. Therefore, should this court allow for the independent administration of the succession, Judge Traylor, retired, nevertheless seeks the removal of the current Independent Administrators for the following reasons. The undersigned shows that good cause exists for the removal of the current co-administrators. Firstly, as the court can glean from numerous filings in this matter, this succession has become contentious. Upon belief, the Independent Administration Law was designed and enacted for uncontested successions. This one is not. Neither public policy, the estate, the heirs, or other interested parties are benefited by this administration. With due respect, the co-administrators are unreasonably seeking to impose excessive costs and burdens on this estate by demanding possession of community property prior to the *corpus* of the community being determined. Further, they may have, for reasons that may be more fully shown at time of trial of this matter, a personal prejudice and bias against this interested party which is interfering with the orderly affairs of this succession.

In the alternative, should this court deny the motion and allow the co-administrators to continue to serve, Judge Traylor, retired, moves this court for an order providing for an interim administrative accounting on a bi-weekly basis pursuant to La. C.C.P. Art. 3396.17. For the reasons more fully set forth in previous motions and memoranda in support, Judge Traylor, retired, further seeks an order providing that the actual possession of the community property, as it now exists be maintained until such time as the administrators conduct an inventory and detailed descriptive list for the

purpose of the determining the *corpus* of the community with certainty. Judge Traylor, retired, further prays that this court issue an order that the interim accounting and reports of the administrators, should their administration be maintained by this court, also provide for notice of their intended disposition of community assets and the use of the proceeds from the sale of such assets, *i.e.* whether they will go to pay debts or his reimbursement claims presently pending.

Respectfully submitted,

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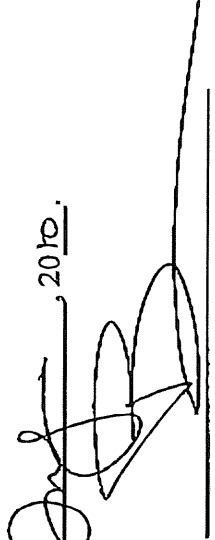
Brady D. King, II (#18288)
ATTORNEYS FOR JUDGE CHET TRAYLOR,
RETIRED

CERTIFICATE

I, BRADY D. KING, II, HEREBY CERTIFY that a copy of the above and foregoing has been served on all counsel of record by facsimile, electronic mail or by placing a copy of same in the United States Mail, properly addressed and with adequate postage affixed thereon to:

Paul Spillers
Theus, Grisham, Davis & Leigh, L.L.P.
1600 Lamy Lane
Monroe, LA 71201

Monroe, Louisiana, this  day of , 2010.



OF COUNSEL

STATE OF LOUISIANA * PARISH OF FRANKLIN

FIFTH JUDICIAL DISTRICT COURT

SUCCESSION OF

PEGGY MARIE McDOWELL TRAYLOR

FILED: _____

PROBATE DOCKET NO.: 41,291

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SHOW CAUSE ORDER

CONSIDERING THE FOREGOING MOTION:

IT IS HEREBY ADJUDGED, ORDERED AND DECREED that Noble Edward Ellington, III and Fred Ryan Ellington show cause, if any they may have, at _____ A.M./P.M on the ___ day of _____, 2010 at Winnsboro, Franklin Parish, Louisiana why Chet Traylor's Motion to Terminate Administration and for other relief should not be granted as prayed for and in its entirety.

Judge
Fifth Judicial District Court

PLEASE SERVE:

Administrators for the Succession of Peggy Marie McDowell Traylor
through their attorney of record
Paul Spillers
Theus, Grisham, Davis & Leigh, L.L.P.
1600 Lamy Lane
Monroe, LA 71201

STATE OF LOUISIANA * PARISH OF FRANKLIN
FIFTH JUDICIAL DISTRICT COURT

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MOTION TO CONTINUE

NOW INTO COURT, through undersigned counsel, comes Judge Chet Traylor, retired, who moves this Honorable Court for an Order continuing Noble Edward Ellington, III and Fred Ryan Ellington's Motion to Turn Over and the his Motion to Quash. Mover shows that he has filed a Motion to Terminate the Administration which is pending. The outcome of that motion has a direct effect on these and other pending motions and may render them moot.

Respectfully submitted,

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OF COUNSEL

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SHOW CAUSE ORDER

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IT IS HEREBY ADJUDGED, ORDERED AND DECREED that Noble Edward Ellington, III and Fred Ryan Ellington show cause, if any they may have, at _____ A.M./P.M on the ___ day of _____, 2010 at Winnsboro, Franklin Parish, Louisiana why Chet Traylor's Motion to Continue should not be granted as prayed for and in its entirety.

Judge
Fifth Judicial District Court

PLEASE SERVE:

Administrators for the Succession of Peggy Marie McDowell Traylor through their attorney of record
Paul Spillers
Theus, Grisham, Davis & Leigh, L.L.P.
1600 Lamy Lane
Monroe, LA 71201