

FAX #: 337-369-9397

July 31, 2010

Honorable Anne Lennan Simon, Judge Ad Hoc
1705 Loreauville Road
New Iberia, Louisiana 70563

RE: Succession of Peggy Marie Traylor
41,291, 5th JDC, Franklin Parish, La

Judge Simon,

This is a **Memo in Opposition** to the **Motion to Continue** filed by Justice Traylor(Ret.) yesterday, July 30, 2010 on the Friday-eve of the August 2 hearings on Motions that have been pending since May 21, 2010 and June 1, 2010. I must apologize to both the court and opposing counsel for the format, and perhaps less than normal quality, of this communication. I am typing my own.

Justice Traylor(Ret) argues his **Motion to Continue** should be granted because his **Motion to Remove Succession Representatives** (also filed on the Friday-eve of the August 2 hearings) “may render them(the August 2 hearings) moot”. The **Motion to Continue** should be denied for reasons shown below. Succinctly stated, Justice Traylor(Ret) has failed to allege any ground, nor can he, for a continuance.

Justice Traylor(Ret) has alleged “contentiousness” between himself and the Co-Administrators as ground for removal of the Co-Administration from their office. He states the obvious fact that lots of pleadings have been filed. “Contentiousness”, however, is not a ground for removal. A succession representative may be removed from office for any of the grounds specified in La. C.C.P., art. 3182. None of the specified grounds include “contentiousness” between the succession representative and an heir. Our courts have held that even a more profound “conflict of interest” is not

ground for removal. Succession of Montgomery, 452 So.2d 297(La. App. 2nd Cir. 1984) (“*A mere conflict of interest without more is not ground for removal of a succession representative. The party seeking the removal must prove either the existence of one of the grounds for removal contained in LSA-CCP, art. 3182 or that the representative breached his fiduciary duty to the succession under LSA-CCP art.3191*”). The **Motion for Removal** has made no allegation of any ground for removal under either Article 3182 or Article 3191. “Contentiousness” is simply not a ground recognized by our law for the removal of a succession representative. Justice Traylor’s(Ret) argument has no merit.

Justice Traylor’s(Ret) next argument is that the Motion to Continue should be granted because he did not “concur” for there to be “*independent administration*” of this succession proceeding. It is true that Justice Traylor did not concur, but his concurrence is unnecessary until such time as a usufruct has been *recognized* by the court. Justice Traylor(Ret) speaks, prematurely, of “his” usufruct. As the Independent Co-Administrators have repeatedly pointed out in prior briefs submitted to the court, **Justice Traylor(Ret) has FAILED to file the required inventory and post the required bond.** Accordingly, no court has *recognized* a usufruct in his favor, nor should a court do so, until the legal prerequisites have been satisfied. Justice Traylor(Ret) must first comply with the law applicable to **all** citizens. Justice Traylor(Ret) has made no allegation that he has been prevented from preparing and filing the inventory and petitioning this court to establish the amount of the bond. Justice Traylor had undisturbed possession of all of the Decedent’s property after Decedent’s date of death. He was repeatedly urged to “file your inventory”(in writings directed to his attorney and attached as Exhibit C to the Motion for Turn-Over Order). A copy is attached for the Court’s ready reference. Despite the gentle urging of the Co-Administrators, Justice Traylor(Ret) did nothing until the belated filing last week of an “Initial Inventory and Proof of Claim”. This filing is grossly

inadequate as the “inventory” required by our law. La. C.C. art. 570. The filing sets forth neither the fair market value of the assets, nor the location, nor the amount of the debts. Accordingly, Justice Traylor’s(Ret) “inventory” provides the court with no basis for establishing the amount of the bond required by law. Significantly, the amount of the debts were not disclosed by Justice Traylor(Ret). The filing is “way too little, way too late”. Justice Traylor(Ret) has to date made no good faith inventory and posted no bond, both legal pre-requisites for him to petition this court to be *recognized* as having a usufruct under Art. 890 of the Civil Code. Therefore, his concurrence is not required under La. CCP, art. 3396.8. Thus, Justice Traylor(Ret) has alleged no ground for removal of the Independent Co-Administrators nor has he alleged ground for conversion of the *independent administration* to one of “normal administration”. Conversion will be addressed below.

If the court were to conclude that a usufruct is *recognized* without filing an inventory and posting a bond for the protection of the naked owners, then the court can convert the administration of this succession proceeding from “*independent administration*” to normal administration on the basis of lack of concurrence of the usufructuary. La. CCP, arts 3396.8 and 3396.20. Such a holding by the court, however, merely terminates “*independent administration*” of the succession proceeding. Such a holding would not remove the succession representatives from office. The termination of “*independent administration*” would then necessitate the Co-Administrators complying with the normal requirement to submit all matters to the court for approval, publishing notices in the newspaper, posting bond, etc.---all of which generate additional administrative expenses(attorney fees, publication costs, etc) and delay in the administration of the succession proceeding. Justice Traylor’s(Ret) half of the community will be allocated one-half of the attorney fees allocable to the community. Thus, conversion of the more efficient “*independent administration*” to the more cumbersome and costly

normal administration will result in additional costs to be born by both Justice Traylor(Ret) and the naked owners, a burden on both the succession proceeding and Justice Traylor(Ret).

In summary, Justice Traylor's(Ret) **Motion to Continue** should be **denied and dismissed**. Justice Traylor(Ret) alleges no prejudice if the August 2nd hearings go forward as scheduled on August 2nd. He will suffer no prejudice if the court goes forward with the two long-filed Motions(Motion to Quash and Motion for Turn-Over Order), both having been filed for over two months. His **Motion for Removal of Succession Representative.....** does not allege any ground for removal of the succession representatives. At best, his recently filed **Motion for Removal of Succession Representative** alleges a basis for termination of "*independent administration*" and conversion of this succession proceeding to one of normal administration. If the court were to convert to normal administration the current Co-Administrators would remain in office. They would then seek court approval, in advance, for each administrative decision. Even if converted to normal administration, the long-filed Motion to Quash and Motion for Turn-Over Order should be heard and decided. The Co-Administrators, whether they wear the "independent" hat or the "normal", they need the information, and possession, of all Decedent's property. This need will exist whether they serve as "independent administrators" or "normal administrators". The Motion to Continue should be **denied**.

Respectfully,

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CERTIFICATE OF SERVICE

I certify that a copy of this letter has been served upon Mr. Brady King, attorney for Justice Chet Traylor(Ret) by faxing a copy to him on this 31st day of July, 2010.

Monroe, Louisiana.



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