

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 QUASH

NOW INTO COURT, through undersigned counsel, comes JUDGE CHET TRAYLOR, who for the reasons more fully set forth in the attached memorandum in support, moves this Honorable Court for an Order quashing the subpoena directed to Franklin State Bank seeking the production of certain financial records of Chet Traylor both individually and as a joint account holder.

Respectfully submitted,

McNEW, KING, MILLS, BURCH & LANDRY, LLP
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Brady D. King, II (#18288)
ATTORNEYS FOR JUDGE CHET TRAYLOR

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

Samuel T. Singer
Law Offices of Samuel T Singer, PLC
6603 Main Street
Winnsboro, LA 71295

Monroe, Louisiana, this 21st day of May, 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 _____
DEPUTY CLERK OF COURT

SHOW CAUSE ORDER

CONSIDERING THE FOREGOING MOTION:

IT IS HEREBY ADJUDGED, ORDERED AND DECREED that the administrators of the Succession of Peggy Marie McDowell Traylor 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 Quash should not be granted 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

SUCCESSION OF
PEGGY MARIE McDOWELL FILED:
TRAYLOR

PROBATE DOCKET NO.: 41,291 DEPUTY CLERK OF COURT

MEMORANDUM IN SUPPORT OF MOTION TO QUASH

MAY IT PLEASE THE COURT:

On or about August 22, 2009, Peggy Marie McDowell Traylor passed away. Surviving her is her husband, Chet D. Traylor, and her major sons, Noble Edward Ellington, II and Fred Ryan Ellington. It is currently believed that Mrs. Traylor died intestate. Noble and Fred Ellington have applied to be and have been appointed as co-administrators of Mrs. Traylor's estate.

The Ellingtons have demanded production of all banking and financial records of Mr. and Mrs. Traylor dating from November 11, 1996 to the present time. Mr. Traylor resisted production and therefore the succession administrators had issued a subpoena *duces tecum* and records only deposition to Franklin State Bank for production of the requested records. The subpoena and deposition seek production of all financial records held by Franklin State Bank which pertain to 'Peggy Marie McDowell Traylor and/or Chet D. Traylor'. Mr. Traylor objects to the production as requested by the Subpoena as it seeks information prohibited to the co-administrators.

Mr. Traylor first shows that the request for Mr. Traylor's personal and separate accounts should be denied. Petitioners have not presented a good faith basis for production of Mr. Traylor's separate banking records. Accordingly, Mr. Traylor respectfully requests that this Court enter an Order quashing the subpoena to the extent that it requests financial records pertaining to funds owned solely by Mr. Traylor.

Regarding the community and/or joint accounts held by Mrs. Peggy Marie Traylor and Chet D. Traylor, Mr. Traylor shows that the subpoena is too broad. While acknowledging that the administrators are required to provide an inventory and/or

descriptive list of the property of the estate of Mrs. Traylor, production of 13 years of bank statements is beyond scope of that obligation. Mr. Traylor has agreed to provide information evidencing the balance in any community/joint accounts as of the date of Mrs. Traylor's death. Production of this information satisfies the administrators' obligation.

As the surviving spouse, Mr. Traylor is entitled to a usufruct over Mrs. Traylor's half of all community property, including consumables. See La CC Articles 890 and 538. He further owns the other ½ of the funds outright. Production of records pertaining to that ownership interest is unnecessary and in violation of his privacy rights.

Further, Mr. Traylor shows that if the purpose of this request, as is suspected, is to determine if the estate has a reimbursement claim against the community or Mr. Traylor's separate property, the administrators should first be made to show an estimated value of the reimbursement claim and the time period when the claim arose. The succession administrators have not produced records showing transfers from Mrs. Traylor's separate property to the community.

The subpoena is clearly a "fishing expedition". Use of a subpoena *duces tecum* for such a purpose is prohibited by Louisiana law. See Article 732 of the LSA C.Cr. P. A subpoena *duces tecum* may order a person to produce records at a trial or hearing. In this instance, production is not being made at trial. Further, the article allows the court to vacate or modify the subpoena if it is unreasonable or oppressive. Mr. Traylor shows that this subpoena which requires production of every bank statement issued by Franklin State Bank for any account on which his name is associated for the last thirteen years is both oppressive and unreasonable.

Production of the records requested by the petitioners is not necessary to complete the required inventory. The only information that is needed is the balance of the account as of the date of Mrs. Traylor's death. Mr. Traylor has agreed to provide that information to provide that information to the administrators.

WHEREFORE PREMISES CONSIDERED, Mr. Traylor respectfully requests that this Court enter an order quashing the subpoena *duces tecum* issued to Franklin State Bank.

Respectfully submitted,

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Monroe, Louisiana, this 21st day of June, 2010.



OF COUNSEL