

Involved In Trust Litigation? You Better Show Up or It's Gone!

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In April 2021, the California Court of Appeal issued the decision of *Breslin v. Breslin*, effectively putting all trust beneficiaries on notice that they are at risk of being disinherited if they do not attend a Court ordered mediation. In other words, as a beneficiary, do NOT ignore ongoing litigation involving trusts, even if you are not a participating in the litigation.

Don't Be Left Out of the Settlement

The court summarized the case as follows:

"The trustee of a decedent's trust petitioned the probate court to determine the trust beneficiaries. The potential trust beneficiaries received notice of the petition. The probate court ordered the matter to mediation. The same potential beneficiaries received notice of the mediation, but some did not participate. The participating parties reached a settlement that excluded the nonparticipating parties as beneficiaries. The probate court approved the settlement. The nonparticipating parties Pacific Legal Foundation et al. (collectively the Pacific parties) appeal. We affirm. A party receiving notice under the circumstances here, who fails to participate in court-ordered mediation, is bound by the result."



Bye Bye Inheritance

While it has always been a best practice to have all beneficiaries in contact with the trustee on the day of mediation, and to have all beneficiaries consent to the terms of any settlement, *Breslin* has now made beneficiary participation at mediation mandatory. Failure to participate in mediation may result in the beneficiary forfeiting their interest in the trust, and that non-participating beneficiary will be bound by any settlement reached at mediation.

It is now more important than ever for beneficiaries to pay attention to ongoing trust litigation, and to have effective representation to protect their

rights and interest. Breslin also (hopefully) helps trustees expedited a resolution to ongoing litigation that can drain trust assets. And as any good trustee knows, the longer trust litigation goes on the more exposure and liability for the trustee.



Try to Mediate, Before You Litigate

While the long term affects of this case are still unknown, and implementation still early, the case is a big step in the right direction of helping families find a creative resolution to litigation outside of the Court's limited toolbox.

In theory, mediation is always a step in the right direction. However, it remains to be seen if forced mediation will deliver the same results as when all parties voluntarily decide the time is right for a creative resolution to their case. There is also the issue of costs, who should be responsible for the cost of mediation? Should beneficiaries that did not participate in the litigation, but are being forced to attend mediation have to share in the cost? The answers to these, and many more questions, remains to be seen. At the very least, let's hope that this will help the Court's highly impacted calendar.



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