



1 THE PROBATE COURT HAS ADMINISTRATIVE POWERS AS DISTINGUISHED FROM  
2 STRICTLY JUDICIAL POWERS IN REGARD TO ADMINISTRATION OF TRUST  
3 ESTATES TO ENFORCE THE DUTIES OF TRUSTEES -- THEREFORE  
4 PETITIONER'S IN LIMINE MOTIONS SHOULD BE GRANTED

5 Even if it were not called upon by the beneficiary to do so,  
6 the probate court should, on its own motion, act to enforce the  
7 duties of trustees. See 3 Scott, LAW OF TRUSTS (4th ed), §200.4,  
8 pp.216-219.

9 Although a court generally does not act on its own  
10 initiative in protecting rights or enforcing duties, the modern  
11 tendency is for the probate court to do so.

12 "There is, however, a modern tendency in the united  
13 States for a court that has supervision over the  
14 administration of trust estates to enforce the duties  
15 of trustees even though not called upon by the  
16 beneficiaries to do so" (3 Scott, LAW OF TRUSTS,  
17 §200.4).

18 The Court has a function of seeing that the directions of  
19 the trustor are carried out; an administrative function.

20 "The notion seems to be, although it is never very  
21 explicitly stated, that it is the function of the court  
22 to see that the directions of the settlor are carried  
23 out, even though no one complains to the court of the  
24 failure of the trustee to carry them out; that the  
25 court has administrative powers as distinguished from  
26 strictly judicial powers; that once the court acquires  
27 jurisdiction over the administration of the trust, it  
28 is the function of the court to see that the trust is  
administered in accordance with the directions of the  
settlor." (3 Scott, LAW OF TRUSTS, §200.4).

The modern tendency in the United States is for a court that  
has supervision over the administration of trust estates to  
enforce the duties of trustees. See 3 Scott, supra §200.4, citing  
International Trust Co. v. Preston (1916) 24 Wyo. 163.

The fact that the trustor can restrain alienation of a  
beneficiary's interest (i.e., spendthrift provision -- which is

1 valid in California) -- is consistent with an administrative-type  
2 function of the probate court. In this regard, compare the  
3 English with the American views.

4 "In England the courts have adhered to the idea that it  
5 is the function of the court to protect the interests  
6 of the beneficiaries. In England the intention of the  
7 settlor is of importance in determining the extent of  
8 the interest of the beneficiaries, but these interests,  
9 once created, are subject to the control of the  
beneficiaries. Thus in England the beneficiaries can  
transfer their interests, even though the settlor has  
provided otherwise, whereas in most of the American  
states the settlor can restrain the alienation of a  
beneficiary's interest." (3 Scott, supra §200.4):

10 The spendthrift provision has a paternalistic, socialistic,  
11 nature which is NOT consistent with the look-out-for-yourself  
12 (capitalistic) nature of the adversary (litigation-as-a-fight)  
13 paradigm.

14 "Professor Gray's eloquent preface to the second  
15 edition of his Restraints on Alienation suggests that  
16 the judges who aided in the introduction of spendthrift  
17 trusts were influenced, perhaps unconsciously, by the  
18 spirit of paternalism 'which is the fundamental essence  
alike of spendthrift trusts and of socialism.'" (2A  
Scott, supra, §152, citing Gray, Restraints on  
Alienation ix (2d ed. 1895)).

19 The [REDACTED] trust does contain a spendthrift provision.  
20 Petitioner cannot sell his interest. He is irrevocably entangled  
21 by the "hand of the dead" as an unwilling participant in this  
22 entity. Petitioner has no ownership rights, per se, to enforce,  
23 because his interest in the trust lacks an essential incident of  
24 ownership, which is the power of alienation.

25 "OWNERSHIP. Collection of rights to use and enjoy  
26 property, including right to transmit it to others. . .  
27 .". (BLACK, Black's Law Dictionary rev.4th ed. (West  
28 Pub.Co., 1968, s.v. "Ownership" -- emphasis added).

1 The essence of petitioner's action in this Court is, therefore,  
2 to enforce the wishes of [REDACTED] rather than to enforce his  
3 own rights of ownership. Therefore, this Court should treat this  
4 action in an administrative, rather than judicial, manner. An  
5 inquisitorial, rather than adversarial, mode of trial is  
6 appropriate.

7  
8 Dated: March 5, 1995

[REDACTED]  
[REDACTED] petitioner  
in propria persona

1 DECLARATION OF SERVICE BY MAIL

2 (Los Angeles County Superior Court,  
3 [REDACTED]  
4 Probate Court Case No. [REDACTED]

5 [REDACTED], the undersigned, hereby declares:

6 I am over the age of 18 and am not a party to the above  
7 action. My address is [REDACTED]

8 [REDACTED]. On the 5th of March 1995, I served the within  
9 SUPPLEMENT TO: PETITIONER'S IN LIMINE MOTION FOR AN ORDER SETTING  
10 MODE OF TRIAL TO BE INQUISITORIAL RATHER THAN ADVERSARIAL; AND TO  
11 PETITIONER'S IN LIMINE MOTION FOR COURT-APPOINTED EXPERT  
12 WITNESSES on the interested parties in this action by placing a  
13 true copy thereof enclosed in a sealed envelope with postage  
14 thereon fully prepaid, in the United States Post Office mail box  
15 at Los Angeles, California, addressed as follows:

- 16 1) [REDACTED], Trust Officer  
17 [REDACTED] Bank, Trust Dept.  
18 Beverly Hills, California 90212
- 19 2) L. Andrew Gifford, Esq.  
20 Riordan & McKinzie  
21 300 S. Grand Ave., 29th Floor  
22 Los Angeles, CA 90071

23 I declare under penalty of perjury that the foregoing is  
24 true and correct.

25 Executed at Los Angeles, California on the 5th day of March  
26 1995.

27 [REDACTED]