Amended Petition
8 messages

John Minton <jminton@ayhmh.com> Sat, Oct 7, 2017 at 2:20 PM
To: "Peter C. Ho" <peter.ho@alumni.stanford.edu>, Shan-Yuan Ho <shanyuan@gmail.com>, Della Lau <DellaLau@launet.com>

Dear all –

In response to your comments to the amended petition, I thought it would be helpful to put some thoughts in writing so that you can consider them in advance of a conference call.

Let me begin by expressing that we appreciate the time and effort you have put into reviewing the amended petition. We cannot do our job without your input. However, Dan and I were taken aback by the tone of your comments. Obviously, you are frustrated and that is ok. It happens occasionally in litigation. And it is normal to ask questions about legal process and approach and we welcome those questions. But our concern has to do with what we perceive as a tone of superior knowledge about legal process and approach. If you don't trust us with those things, this relationship will not work.

With that in mind, I thought it would be helpful to address your concerns in an email and explain the purpose of a petition in probate and respond generally to your comments so that we can have a more meaningful conference call.

1. The purpose of a petition in probate court is to serve as the roadmap for future pleadings.

a. For example, if we have a dispute about the proper scope of discovery, a broadly written petition with more facts can allow for broader discovery. This probate judge has denied discovery requests because the petition did not contain enough factual detail. Incidentally, we expect to cast a very wide net with discovery. I think we want to turn over every rock in this case.

b. There may be motions and other papers that will be filed as we proceed. We will copy details from the petition and paste them into other motions down the road.

c. We will have various status conferences with the probate judge as we proceed with our case. The judge will not typically read the entire petition in advance of these status conferences. He will probably skim it, or perhaps only read the introduction, to remind himself about the general nature of the case.

d. Just before trial, we will have a chance to submit a "trial brief" in which we will tell the judge about the case, and what the evidence will be. This will incorporate additional details learned in discovery. The trial brief (not the petition) is what sets forth facts that will be proven at trial. Petitions are far looser in terms of setting forth a narrative. A petition can include hearsay, tangentially relevant details, etc.

2. Probate court is unique. Having litigated in a number of forums outside of probate, we can tell you with certainty that other types of proceedings in which you may have been involved operate very differently from probate court.

3. About your specific comments:

a. The amended petition is indeed choppier than the original petition. That should be expected. The original petition focused on the Redwood City home and started the clock as of 2014. That is a far easier and more streamlined story to tell.

i. Whether we like it or not, details from prior to 2014 will be introduced by Debby. It is better to get a jump on her and tell the earlier story from our perspective first. But because that story is longer and more detailed than the story we tell in the original petition, it is much more difficult to keep it crisp. This is a constant balancing act when drafting petitions – as you add more detail, you inevitably take a little away from the smoothness of the story. Unfortunately, that is the tradeoff we have to make to justify our discovery demands and put Debby on the defensive about pre-2014 facts.

1. For example, the details prior to 2014 are necessary to secure relief related to McCollum. However, the McCollum property is a difficult issue. It is an outlier from the rest of our narrative. The transfer to Debby's trust occurred many years before James' cognition issues begin showing up in the medical records. However, Debby will introduce McCollum as an example of James' generosity to her. Better to introduce it ourselves and put Debby on the defensive.

ii. We drafted the amended petition based on your desire to go after Debby for everything we can. A case like that requires a broader scope. The amended petition signals to Debby and her attorney that this case is going to

trial. We are not interested in a quick settlement, unless she is ready to cave on every issue. It also signals to her that we are going to pound her with discovery. We are going to demand her tax and banking records going back to 2005. To get those, we need facts in the petition to justify our discovery demands.

1. Your negative reaction to the amended petition may be a sign that you are not interested in going after Debby for everything. The strategy that makes the most sense to us is to prosecute the case as broadly as possible, because Debby is likely to use James' history of letting her live rent free and transferring the LA home to her as a defense. Please think about whether you want to engage in the discovery battles that lay ahead. Do you want us to be pushing the envelope (e.g. fighting a motion about tax returns)? We might lose some of those discovery battles. Or would you rather focus on the fact that James was cognitively impaired when he gave up the $1.1 million and seek to settle the case as soon as possible. Now is a good time to consider that. And we should continually evaluate whether you want to keep pushing toward trial or posture the case for settlement. (I realize that, to date, your desire is to put Debby through the ringer with the litigation process, and you do not desire an early settlement.)

b. The introduction and factual background sections are redundant.

i. Again, this is a balance. For those readers, sometimes the judge, who don't bother to read past the introduction, you want enough detail in the introduction to convey the gravity of the situation.

c. The introduction doesn't mention McCollum.

i. This was a close call. The intro typically will focus on the most damning factual allegations, and I don't think any of us think McCollum falls in that category. We want the reader to finish the introduction and think, "game over for Debby." We don't think McCollum helps in this regard. Obviously we address this issue later because there is serious monetary value in the property, there is a chance we could recover it, it helps keep Debby from using it against us, and we don't think attempting to recover it hurts our petition overall.

d. Factual errors. We are doing our best with the mountain of information you provided us. You all have lived these facts. We have not. Please remember this. That said, you should expect to see fewer mistakes as we proceed.

i. Your fact checking is an important part of the process. A great example is the paragraph about isolation. We are aware that proving those facts is difficult. But they are facts you told us. If they aren't true or are of minimal significance (e.g., Debby would say that itwas an "inconvenient time to visit" your father but you talked to him later that day or the next day), we shouldn't put them in the amended petition. If the facts are

true, part of discovery is figuring out if we will have enough facts to prove isolation. If we don't, we won't try to prove that in the trial.

e. We seek that, in the alternative, the court re-title the Redwood City property.

i. This is a good example of trusting us on legal process. We know that your goal is to get the money. However, the alternative remedy is the sole basis for the lis pendens that we filed, because you can only put a lien on a property if one of the requests in the legal proceeding in question is to change title to the property.

f. You have made a number of helpful modifications that we have incorporated into the next draft. The ones we did not accept were, in our view, not moving the ball forward in the best way. A petition like this presents dozens of judgment calls in terms of how to say something and, ultimately, as probate lawyers who often practice before this judge, we need you to defer to us in this regard.

4. Peter requested that the conference call be only between him and myself. If you'd rather speak to just me, that is fine, but I'd prefer to have you all on the call so that we can be on the same page going forward.

a. I often include Dan when I feel that it will be more efficient for him to participate and where he is closer to specific issues. That is a judgment call that I make, keeping in mind the added cost of his participation. On some issues, for example, it is more efficient for him to participate than for me to later relay the information to him.

b. As you saw from the road-map email where I provided an estimate of costs for each stage, the cost of this litigation will be high. There are ways we can work to reduce that cost, but if the goal is to stay on the offense against Debby rather than try to position the case for settlement, Dan's involvement is going to be important. There is inherent tension between the "burn Debby to the ground" approach and the recent concerns expressed about costs.

Please let me know some times that work for you to have a call to discuss the foregoing, and any other issues you wish to discuss.

Thanks,

John

Peter C. Ho <peter.ho@alumni.stanford.edu> Mon, Oct 9, 2017 at 11:48 AM
To: John Minton <jminton@ayhmh.com>
Cc: Shan-Yuan Ho <shanyuan@gmail.com>, Della Lau <DellaLau@launet.com>

Dear John,

Thank you very much for your well thought-out email. Obviously, we need to touch bases, and we look forward to doing that. My oldest sister Shan-Yuan is not available today, and my second sister Della is unavailable tomorrow. The soonest guaranteed time we can conference is Wed afternoon after 2pm.

Briefly, the comments in the margins of the doc were totally mine (neither of my sisters could view the comments because of some strange compatibility issues with their versions of Word and doc readers). You're more than welcome to reject any changes we have made--that has always been the case. With your clarification on the petition being held to a lower standard than the trial brief, were I more knowledgeable about that beforehand, I would not have deleted anything you wrote in the petition. When I was doing so, I saw it as something that I would have to defend during deposition but would not be able to. My apologies to you and Dan if it appeared I was over-stepping my bounds in that matter; it certainly was not my intent.

Also, we have not wavered from going after it all albeit the time frame has changed. We're not afraid of discovery, either. Much of the perceived changes has to do with being handcuffed by parking $300k into a trust account that we needed for this case. We'll discuss this more during our conference call.

Thanks,
Peter
[Quoted text hidden]

John Minton <jminton@ayhmh.com> Mon, Oct 9, 2017 at 12:00 PM
To: "Peter C. Ho" <peter.ho@alumni.stanford.edu>
Cc: Shan-Yuan Ho <shanyuan@gmail.com>, Della Lau <DellaLau@launet.com>