

STATE OF MAINE

CUMBERLAND COUNTY PROBATE COURT

DOCKET NO. 99-329

Estate of Leone R. Murray
~~Deceased or Protected Person~~

GENERAL NOTICE OF
BEGINNING OF A FORMAL
PROBATE PROCEEDING
WITH HEARING DATE
Rule 4 (a) (1)

This notice is directed to

Andrew Ketterer, Attorney General for the State of Maine,

6 State House Station, Augusta, Maine 04333-0006

(name and address)

who is believed to have an interest in this estate and in a proceeding relating to this estate which has been begun by a petition, a copy of which is attached to this notice. The date, form number (if any) and caption of the attached petition are

Petition of Fleet Bank of Maine, Trustee, To Amend Trust, dated March 11, 1999

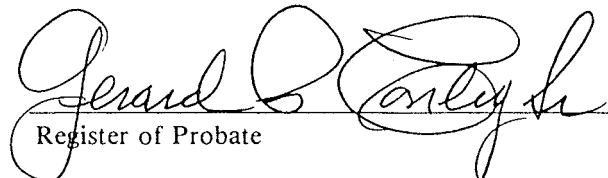
A hearing has been scheduled on this petition to take place on April 12, 1999 at 11:30

o'clock in the forenoon at the Cumberland County Probate Court at
142 Federal Street, Portland, Maine

THE ACTION OR ORDER SOUGHT IN THE ATTACHED PETITION MAY BE GRANTED IF NO INTERESTED PERSON APPEARS AT THE HEARING TO OBJECT. YOU MAY ALSO FILE WRITTEN OBJECTIONS TO THE PETITION, BUT THE FILING OF SUCH WRITTEN OBJECTIONS WILL NOT SUBSTITUTE FOR APPEARANCE AT THE HEARING UNLESS THE COURT SO ORDERS. IF YOU FILE WRITTEN OBJECTIONS, YOU MUST SEND A COPY TO PETITIONER'S ATTORNEY WHOSE NAME, ADDRESS AND TELEPHONE NUMBER ARE LARISSA S. PRATT, PIERCE ATWOOD,
ONE MONUMENT SQUARE, PORTLAND, MAINE 04101 - Tel: (207) 791-1100

or, if there is no attorney, to the petitioner, whose name, address and telephone number are

Dated March 11, 1999.


Register of Probate

STATE OF MAINE

PROBATE COURT
CUMBERLAND, SS.

Portland, Maine
Docket No.

In re Trust under Agreement of)
LEONE R. MURRAY,)
Deceased)
FLEET BANK OF MAINE, in its capacity)
as Trustee of the Trust established)
under Article Second, Paragraph 4)
of the Trust of Leone R. Murray,)
Petitioner,)
V.)
ANDREW KETTERER, in his capacity)
as Attorney General for the State)
of Maine;)
THE JIMMY FUND,)
a nonprofit corporation with a)
principal office in Boston, MA; and)
MARIAN MANOR,)
a nonprofit corporation located)
in South Boston, MA; and)
CATHOLIC FOREIGN MISSIONARY)
SOCIETY (MARYKNOLL),)
a nonprofit corporation with a)
principal office in Maryknoll,)
New York; and)
CARDINAL CUSHING SCHOOL,)
an education institution located in)
Hanover, MA,)
Respondents.)

TRUSTEE'S PETITION TO
AMEND TRUST

NOW COMES FLEET BANK OF MAINE, in its capacity as Trustee of the Trust established under Article SECOND, Paragraph 4 of a Trust Agreement of Leone R. Murray, as amended by a Second Amendment thereto, and petitions the Court as follows:

1. Leone R. Murray (hereinafter sometimes referred to as the "Grantor"), late of Waterville, Maine, established a Revocable Intervivos Trust, dated June 18, 1971, with Federal Trust Company as Trustee. Said Trust was first amended on April 15, 1983 and was again amended on March 5, 1985. A copy of the Trust and the amendments thereto are attached hereto at Exhibit 1.

2. Said Trust provided that upon the death of the Grantor, the balance of Trust assets remaining after making certain specific bequests and payment of estate expenses, were to be held in trust for the benefit of the Grantor's husband, Fred L. Murray, during his lifetime. Upon the death of the Grantor's husband, the remaining assets were to pass according to the provisions of Article Second of the Trust as amended as of the Grantor's date of death.

3. In the Second Amendment to the Trust, said Leone R. Murray amended Article Second, Paragraph 4 of said Trust to read as follows:

"4. One Hundred Thousand (\$100,000) Dollars to MERRILL BANK of Waterville, Maine, in Trust, however, in perpetuity, with the net income to be paid in equal shares to the JIMMY FUND-SIDNEY FARBER CANCER INSTITUTE, the CATHOLIC MISSIONARY SOCIETY OF AMERICA (also known as MARYKNOLL FATHERS OF OSSINING, New York), the CARDINAL CUSHING SCHOOL AND TRAINING CENTER (formerly known as ST. COLETTA'S SCHOOL FOR RETARDED CHILDREN, HANOVER, MASSACHUSETTS), and the LITTLE SISTERS OF THE POOR located at 186 Highland Avenue, Somerville, Massachusetts, provided that they are providing assistance to the elderly in the nature of housing or elderly care. Should the LITTLE SISTERS OF THE POOR then not be in existence or if they are not providing housing or care for the elderly, then the Trustee shall pay over such share to a charitable organization providing such housing or care to the elderly. The selection by my Trustee shall be final and binding. Should any of the other beneficiaries cease to exist, without a successor or cy pres declaration, then the surviving beneficiaries shall receive their share."

4. Leone R. Murray, the Grantor, died on July 2, 1987. The Grantor's husband, Fred L. Murray, died on June 13, 1993.

5. Fleet Bank of Maine, by merger or consolidation, has succeeded Merrill Bank, which succeeded Federal Trust Company, as the Trustee of Trust established under Article Second, Paragraph 4 of said Trust of Leone R. Murray.

6. Three of the four named charitable beneficiaries of the Trust established under Paragraph 4 of Article Second of the Grantor's Trust, as amended, were in

existence at the time of death of the Grantor's husband. Those charitable beneficiaries were The Jimmy Fund, Catholic Foreign Missionary Society and Cardinal Cushing School.

7. The fourth named charitable beneficiary, Little Sisters of the Poor, was not in existence at such time. In accordance with the terms of the Trust, the Trustee selected Marion Manor as the successor beneficiary to the Little Sisters of the Poor.

8. The Trustee has faithfully distributed the net income of the Trust in equal shares to the charitable beneficiaries in each year of the Trust since the death of Fred L. Murray.

9. On August 27, 1998, the Trustee filed an application with the Internal Revenue Service (the "Service") seeking recognition of its tax exempt status (Form 1023). The Service will not recognize the tax exempt status of the Trust unless the language of the Trust is amended to meet the organizational test for exemption under section 501(c)(3) of the Internal Revenue Code (the "Code").

10. Specifically, the Service has required that the following language, or language with similar import and effect, be incorporated into the Trust:

"Said organization is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

"No part of the net earnings of the organization shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the organization shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose clause hereof. No substantial part of the activities of the organization shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the organization shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this document, the organization shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.

"Upon the dissolution of the organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or

shall be distributed to the federal government, or to a state or local government, for a public purposes. Any such assets not disposed of shall be disposed of by the Probate Court of the county in which the principal office of the organization is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.”

11. The Trust became irrevocable upon the death of the Grantor on July 2, 1987. Accordingly, the Trustee seeks the approval of the Court to amend the Trust in accordance with Attachment A hereto to meet the requirements of the Internal Revenue Service and the organizational test for exemption under section 501(c)(3) of the Code.

12. The proposed amendment does not affect the beneficial interests of the charitable organizations currently receiving income distributions from the Trust. The amendment simply confirms that which is implicit in the Trust as it currently exists; namely that the Trust assets are to be dedicated in perpetuity to charitable purposes.

13. Absent such amendment, the Trust will be subject to federal and state income taxes on both its income and its recognized capital gains. Such taxes will be significant and onerous in comparison to the size of the trust estate and will substantially deplete the income otherwise distributable to the charitable beneficiaries.

14. The principal place of administration of the Trust under Article Second, Paragraph 4 of the Grantor’s Trust is Portland, Cumberland County, Maine.

15. The Trust could be, although it is not, registered with the Probate Court for Cumberland County.

16. This Court has jurisdiction over the subject matter of this Petition.

17. Venue in this Court is proper.

18. Respondent Andrew Ketterer is the Attorney General for the State of Maine and is named in his official capacity as a party to these proceedings. The Attorney General is responsible for overseeing and enforcing charitable trusts in the State of Maine.

19. Amending the Trust as proposed ensures that the Trust assets remain dedicated to charitable institutions and charitable purposes chosen by Leone R. Murray.

20. In bringing this Petition, Fleet Bank of Maine has acted prudently and in the best interests of the Trust.

WHEREFORE, Fleet Bank of Maine respectfully requests that this Court find:

1. This Court has jurisdiction over the subject matter of this Petition and that venue in this Court is proper.

2. All persons entitled to notice of this Petition have received such notice and have had an opportunity to appear and to be heard.

3. In establishing the Trust under Article Second, Paragraph 4 of the Grantor's Trust, as amended, the Grantor specifically intended to benefit, in perpetuity, charitable purposes.

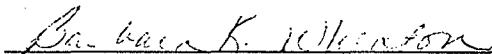
4. The amendment to the Trust sought by the Trustee does not change the Grantor's intention but merely brings the Trust into compliance with the organizational test for tax exemption under section 501(c)(3) of the Internal Revenue Code.

5. It is necessary to amend the Trust to ensure that income taxes do not erode the Trust principal and that, in furtherance of the Grantor's intent, income distributions can continue to be made to the charitable beneficiaries in perpetuity.

6. In bringing this Petition, Fleet Bank of Maine has acted prudently and in the best interests of the Trust.

FURTHER, Fleet Bank of Maine respectfully requests that the Court ORDER: (i) that the Trust be amended to include the language as set forth in paragraph 10 of this Petition; and (ii) that the expenses incurred by Fleet Bank of Maine in bringing this Petition, including reasonable attorneys fees, be paid from the Trust under Article Second, Paragraph 4 of the Revocable Trust of Leone R. Murray.

Respectfully submitted this 11th day of March, 1999.



Barbara K. Wheaton
Larissa S. Pratt

Pierce Atwood
One Monument Square
Portland, Maine 04101-1110
(207) 791-1100

Attorneys for Petitioner
Fleet Bank of Maine

ATTACHMENT A

Fleet Bank of Maine, Trustee of the Charitable Trust established under Article Second, Paragraph 4 of the Revocable Trust of Leone R. Murray, seeks to amend said Trust to include the following language in said Paragraph 4 of said Trust:

“Said Trust is organized exclusively for the purpose of making distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or any corresponding section of any future federal tax code.

“No part of the net earnings of the Trust shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the Trustee shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose clause hereof. No substantial part of the activities of the Trust shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Trustee shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this document, the Trustee shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.

“Upon the dissolution of the Trust, the trust assets shall be distributed in equal shares to the beneficiaries named herein, or their successors in interest, but if none exist, then such assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for public purposes. Any such assets not disposed of shall be disposed of by a Probate Court of competent jurisdiction, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.”

STATE OF MAINE

PROBATE COURT
CUMBERLAND, SS.

Portland, Maine
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LEONE R. MURRAY,))
Deceased))
FLEET BANK OF MAINE, in its capacity))
as Trustee of the Trust established))
under Article Second, Paragraph 4))
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V.))
ANDREW KETTERER, in his capacity))
as Attorney General for the State))
of Maine;))
THE JIMMY FUND,))
a nonprofit corporation with a))
principal office in Boston, MA; and))
MARIAN MANOR,))
a nonprofit corporation located))
in South Boston, MA; and))
CATHOLIC FOREIGN MISSIONARY))
SOCIETY (MARYKNOLL),))
a nonprofit corporation with a))
principal office in Maryknoll,))
New York; and))
CARDINAL CUSHING SCHOOL,))
an education institution located in))
Hanover, MA,))
Respondents.))
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FINDINGS AND ORDER

This cause came on for hearing on the Petition of Fleet Bank of Maine, as Trustee of the Trust established under Article SECOND, Paragraph 4 of a Trust Agreement of Leone R. Murray, as amended by a Second Amendment thereto. After notice and hearing, this Court FINDS:

1. This Court has jurisdiction over the subject matter of the Petition and that venue in this Court is proper.

2. All persons entitled to notice of the Petition have received such notice and have had an opportunity to appear and to be heard.

3. In establishing the Trust under Article Second, Paragraph 4 of the Grantor's Trust, as amended, the Grantor specifically intended to benefit, in perpetuity, the named charitable beneficiaries or their successors in interest.

4. The amendment to the Trust sought by the Trustee does not change the Grantor's intention but merely brings the Trust into compliance with the organizational test for tax exemption under section 501(c)(3) of the Internal Revenue Code.

5. Amending the Trust as requested will further the intent of the Grantor that the Trust have all the benefits available under law to perpetual charitable trusts and ensures that the Trust principal and income will not be eroded over time by income taxes unforeseen by the Grantor and contrary to the Grantor's intent.

6. In bringing this Petition, Fleet Bank of Maine has acted prudently and in the best interests of the Trust.

THEREFORE, this Court hereby ORDERS:

1. The Trust established under Article Second, Paragraph 4 of the Revocable Trust of Leone R. Murray, as amended, shall be further amended to include the following language in said Paragraph 4:

“Said Trust is organized exclusively for the purpose of making distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or any corresponding section of any future federal tax code.

“No part of the net earnings of the Trust shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the Trustee shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose clause hereof. No substantial part of the activities of the Trust shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Trustee shall not participate in, or intervene in (including the publishing or distribution of statements) any

political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this document, the Trustee shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.

“Upon the dissolution of the Trust, the trust assets shall be distributed in equal shares to the beneficiaries named herein, or their successors in interest, but if none exist, then such assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for public purposes. Any such assets not disposed of shall be disposed of by a Probate Court of competent jurisdiction, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.”

2. The expenses incurred by Fleet Bank of Maine in bringing this Petition, including reasonable attorneys fees, be paid from the Trust under Article Second, Paragraph 4 of the Revocable Trust of Leone R. Murray.

Dated:

William H. Childs
Judge of Probate

STATE OF MAINE

PROBATE COURT
CUMBERLAND, SS.

Portland, Maine
Docket No. 99-329

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FLEET BANK OF MAINE,)
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General of the State of Maine)
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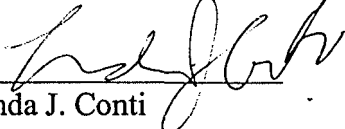
REPLY OF ATTORNEY GENERAL.

NOW COMES ANDREW KETTERER in his capacity as Attorney General of the State of Maine and replies to the Trustee's Petition to Amend Trust as follows:

1. The Attorney General in a party-in-interest in this matter pursuant to 5 M.R.S.A. § 194 and the powers vested in him by common law.
2. The Attorney General has received and reviewed a copy of the Petition in this matter.
3. The Attorney General submits to the jurisdiction of this Court and hereby appears in this action, waiving service of process and further notice of proceedings in this matter.
4. The Attorney General has no objection to the granting of the relief requested in the Petition by this Court.

Dated: March 18, 1999

Respectfully submitted,
ANDREW KETTERER
ATTORNEY GENERAL



Linda J. Conti
Assistant Attorney General
Station 6
Augusta, Maine 04333
Tel. (207) 626-8800