

Order 139-18/19
Passage: 9-0 on 1/23/2019

Effective 2/2/2019

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROVING THE PETITION TO MODIFY TRUSTS
RE: BROWN SILVER MEDALS FOR PORTLAND HIGH SCHOOL STUDENTS

ORDERED, that the City Council hereby approves the petition to modify trusts associated with the Portland Public High School Brown Silver Medals substantially in the form attached hereto, which petition for modification shall be filed with the Cumberland County Probate Court.

STATE OF MAINE

PROBATE COURT
CUMBERLAND, ss.

PORTLAND
DOCKET NO. _____

 In re)
)
 BROWN MEMORIAL)
 TRUST FUND,) **PETITION TO MODIFY TRUSTS**
 PORTLAND HIGH SCHOOL)
 BROWN MEDAL FUND)
 CHARITABLE TRUST, and)
 DELOGU BROWN MEDAL)
 SUPPORT FUND)
)

NOW COMES the Petitioner, the City of Portland, Trustee of the Brown Medal Trust Fund, the Portland High School Brown Medal Fund Charitable Trust, and the Delogu Brown Medal Support Fund, by and through the undersigned counsel, and hereby states as follows:

1. This is an action for equitable deviation or cy pres under the Maine Uniform Probate Code, 18-B M.R.S. § 412 and 18-B M.R.S. § 413.

JURISDICTION AND VENUE

2. The Probate Court has concurrent jurisdiction pursuant to 18-B M.R.S. §203(1) because this matter concerns trusts.

3. The Probate Court has jurisdiction in equity pursuant to 4 M.R.S. § 252 because this matter concerns trusts that are established under written instruments.

4. Venue is proper in Cumberland County pursuant to 18-B M.R.S. § 204 because this matter concerns trusts that are administered in Cumberland County.

APPLICABLE STATUTES

5. 18-B M.R.S. § 412 provides, in relevant part: “[t]he court may modify the administrative or dispositive terms of a trust . . . if, because of circumstances not anticipated by

the settlor, modification . . . will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention."

6. 18-B M.R.S. § 413 provides, in relevant part: "if a particular charitable purpose of a trust becomes unlawful, impracticable, impossible to achieve or wasteful . . . [t]he court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes."

INTERESTED PARTIES

7. The following are interested parties in this matter:

a. The Portland High School Activities Fund, Settlor of the Portland High School Brown Medal Fund Charitable Trust;

b. Orlando Delogu, Joseph D. Delogu, Nancy N. Delogu, and Judy Delogu, Settlers of the Delogu Brown Medal Support Fund (the "Delogu family");

c. The Office of the Attorney General, 6 State House Station, Augusta, Maine 04333-0006.

STATEMENT OF FACTS

8. In 1865, John B. Brown, of Portland, established the Brown Memorial Trust Fund (the "Brown Trust"), a copy of which is attached ("Exhibit A"), and funded the Trust with bonds worth \$5,000.

9. The Brown Trust endowed the awarding of a silver medal "to the three best scholars . . . from the Boys Department of the Portland High School . . . and to the three best scholars . . . from the Girls Department."

10. In 1885, the Brown Trust directed that the number of medals awarded each year increase to ten total, with five reserved for boys, and five reserved for girls.

11. Every year since 1885, in accordance with the Brown Trust’s terms, Portland High School has awarded a silver medal (aptly referred to as the “Brown Memorial Medal”) to each of the top five boys and top five girls in the graduating class.

12. The Brown Memorial Medal is one of the oldest traditions at Portland High School, and many consider receiving the Brown Memorial Medal to be a great honor.

13. Brown Memorial Medal recipients may reference the award on their resumes, and may display the Medal prominently in their homes or offices.

14. In 2012, the Brown Trust corpus became nearly depleted due to the increasing cost of silver, other materials and production processes necessary to fabricate the Medals.

15. To preserve the Brown Memorial Medal tradition, a successful 2012 fundraising appeal resulted in numerous donations to the Portland High School Student Activities Fund, which, in turn, conveyed the aggregate to the City of Portland as Trustee of the Portland High School Brown Medal Fund Charitable Trust (the “2012 Trust”), a copy of which is attached (“Exhibit B”).

16. In conjunction with the 2012 fundraising appeal, the Delogu family established the Delogu Brown Medal Support Fund (the “Delogu Trust”), a copy of which is attached (“Exhibit C”) to provide an additional endowment for the award.

17. As of June 30, 2018, the balances of the three trusts were as follows:

- a. Brown Trust: \$24,341.55
- b. 2012 Trust: \$34,785.29
- c. Delogu Trust: \$9,438.10

18. The Brown Trust, 2012 Trust, and Delogu Trust (collectively “Trusts”) are essentially administered in tandem with each other by the City of Portland, as Trustee, to provide funding for the Brown Memorial Medals each year.

19. The terms of all three of the Trusts still require that the Brown Memorial Medal be awarded annually based upon the gender distinction of five boys, five girls.

20. The original Brown Trust included a gender criterion because, in 1865, Portland High School was divided into a Girls Department and a Boys Department, but the school is no longer divided into separate departments based upon gender.

21. There have been other substantial changes within the law and in prevailing societal conceptions about gender since the Brown Trust was settled in 1865, and even since the 2012 Trust and Delogu Trust were settled in 2012, which were not anticipated by the settlors.

22. The Trusts’ current gender-based criterion is inconsistent with Portland High School’s policy regarding transgender and gender expansive students, adopted in 2017, which was modeled after guidance provided by the Maine Human Rights Commission in 2016 to help schools comply with the Maine Human Rights Act.

23. Due to the current state of the law, the Trustee is concerned that the inclusion of a gender-based criterion for the Brown Memorial Medal might expose the Trusts to the potential for a legal challenge, which could be costly to defend.

24. The intention of the settlors of each of the Trusts was to recognize academic achievement among all students, and the division of the award between boys and girls is not central to that overarching intention.

WHEREFORE, the Petitioner, in its capacity as Trustee of all three of the Trusts, hereby requests that this Court issue an Order:

1. Modifying the terms of the Brown Trust by inserting the following amendment:

“Beginning in the year 2019, and annually thereafter, the ten Medals purchased pursuant to Part Second of this Trust shall be awarded to the ten best scholars, of not less than one year’s standing, graduating from Portland High School, without any distinction based upon gender.”

2. Modifying the terms of the 2012 Trust by deleting the existing Section 4(b) and inserting in lieu thereof the following:

“The intent is that there be no change, to the extent possible, in the quality and value of the Brown Memorial Medals, and that the method by which the Brown Memorial Medals are purchased and awarded be consisted with the terms set forth in the Brown Memorial Trust Fund instrument as amended in 2019, and as it may be further amended from time to time thereafter.”

3. Modifying the terms of the Delogu Trust by deleting the existing Section 8.5(b) and inserting in lieu thereof the following:

“Both the income and principal of this Delogu Brown Medal Support Fund account shall be available to support the continuing award of the ten Brown Medals annually at Portland High School in a manner consistent with the terms of the Brown Memorial Trust Fund instrument as amended in 2019, and as it may be further amended from time to time thereafter.”

4. Granting such other and further relief as the Court may consider appropriate under the circumstances.

Dated at Portland, Maine, this ____ day of December, 2018.

Bruce W. Smith, Esq., Bar No. 7837
Attorney for Petitioner
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101
207-772-1941
bwsmith@dwmlaw.com

STATE OF MAINE

PROBATE COURT
CUMBERLAND, ss.

PORTLAND
DOCKET NO. _____

 In re)
) **ATTORNEY GENERAL'S**
) **RESPONSE TO TRUSTEE'S**
) **PETITION TO MODIFY TRUSTS**
)
)

NOW COMES JANET T. MILLS, in her capacity as Attorney General of the State of Maine, and responds to the Petition to Modify Trusts (the "Petition") for the above referenced trusts as follows:

1. The Attorney General is a party-in-interest in this matter pursuant to 5 M.R.S.A. § 194 and the powers vested in the Attorney General 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.
4. The Attorney General has no objection to the granting of the relief requested in the Petition.

Respectfully submitted,

JANET T. MILLS
ATTORNEY GENERAL

Dated: _____, 2018

 Name
 Me. Bar No.
 Assistant Attorney General
 Attorney General's Office
 Public Protection Division
 State House Station 6
 Augusta, ME 04333
 (207) xxx-xxxx

STATE OF MAINE

PROBATE COURT
CUMBERLAND, ss.

PORTLAND
DOCKET NO. _____

In re)
BROWN MEMORIAL)
TRUST FUND, ET AL.)
)
)

**ENTRY OF APPEARANCE
AND CONSENT TO
MODIFICATION OF TRUSTS**

The Portland High School Activities Fund, Settlor of the Portland High School Brown Medal Fund Charitable Trust, does hereby:

1. Acknowledge receipt of the Petition to Modify Trusts dated December __, 2018;
2. Appear in this matter;
3. Waive the right to receive further notice of any filing, hearing, or order pursuant to Rule 4D(6) of the Maine Rules of Probate Procedure; and
4. Consent to the relief requested by the Petitioner.

Dated: _____, 2018

Portland High School Activities Fund

By: _____

Name: _____

Its: _____

STATE OF MAINE

PROBATE COURT
CUMBERLAND, ss.

PORTLAND
DOCKET NO. _____

In re)
BROWN MEMORIAL)
TRUST FUND, ET AL.)
)
)

**ENTRY OF APPEARANCE
AND CONSENT TO
MODIFICATION OF TRUSTS**

Orlando Delogu, Settlor of the Delogu Brown Medal Support Fund, does hereby:

1. Acknowledge receipt of the Petition to Modify Trusts dated December __, 2018;
2. Appear in this matter;
3. Waive the right to receive further notice of any filing, hearing, or order pursuant to Rule 4D(6) of the Maine Rules of Probate Procedure; and
4. Consent to the relief requested by the Petitioner.

Dated: _____, 2018

Orlando Delogu, Settlor
Delogu Brown Medal Support Fund

STATE OF MAINE

PROBATE COURT
CUMBERLAND, ss.

PORTLAND
DOCKET NO. _____

In re)
BROWN MEMORIAL)
TRUST FUND, ET AL.)
)
)

**ENTRY OF APPEARANCE
AND CONSENT TO
MODIFICATION OF TRUSTS**

Joseph D. Delogu, Settlor of the Delogu Brown Medal Support Fund, does hereby:

1. Acknowledge receipt of the Petition to Modify Trusts dated December __, 2018;
2. Appear in this matter;
3. Waive the right to receive further notice of any filing, hearing, or order pursuant to Rule 4D(6) of the Maine Rules of Probate Procedure; and
4. Consent to the relief requested by the Petitioner.

Dated: _____, 2018

Joseph D. Delogu, Settlor
Delogu Brown Medal Support Fund

STATE OF MAINE

PROBATE COURT
CUMBERLAND, ss.

PORTLAND
DOCKET NO. _____

In re)
BROWN MEMORIAL)
TRUST FUND, ET AL.)
)
)

**ENTRY OF APPEARANCE
AND CONSENT TO
MODIFICATION OF TRUSTS**

Nancy N. Delogu, Settlor of the Delogu Brown Medal Support Fund, does hereby:

1. Acknowledge receipt of the Petition to Modify Trusts dated December __, 2018;
2. Appear in this matter;
3. Waive the right to receive further notice of any filing, hearing, or order pursuant to Rule 4D(6) of the Maine Rules of Probate Procedure; and
4. Consent to the relief requested by the Petitioner.

Dated: _____, 2018

Nancy N. Delogu, Settlor
Delogu Brown Medal Support Fund

STATE OF MAINE

PROBATE COURT
CUMBERLAND, ss.

PORTLAND
DOCKET NO. _____

In re)
BROWN MEMORIAL)
TRUST FUND, ET AL.)
)
)

**ENTRY OF APPEARANCE
AND CONSENT TO
MODIFICATION OF TRUSTS**

Judy Delogu, Settlor of the Delogu Brown Medal Support Fund, does hereby:

1. Acknowledge receipt of the Petition to Modify Trusts dated December __, 2018;
2. Appear in this matter;
3. Waive the right to receive further notice of any filing, hearing, or order pursuant to Rule 4D(6) of the Maine Rules of Probate Procedure; and
4. Consent to the relief requested by the Petitioner.

Dated: _____, 2018

Judy Delogu, Settlor
Delogu Brown Medal Support Fund