

Department 5 Probate Notes for Friday, January 24, 2025

Probate Notes are not tentative rulings. Parties and counsel are still expected to appear for the hearings unless the Probate Note specifies otherwise. Unless indicated otherwise, all parties and counsel are authorized to appear via Zoom using this link: <https://tuolumne-courts-ca-gov.zoomgov.com/j/1615813960?pwd=NTRMT0NwMDg5cnlYdzZ6VnBXWWFsUT09>. [Meeting ID: 161 581 3960; Passcode: 123456]. All matters set for hearing in Department 5 are presumptively assigned to that department for all purposes. Parties retain the right under Cal. Const. art VI §21 to decline consent to the Commissioner serving as a Judge Pro Tem by so stating clearly at the outset of the first hearing in the case. By participating in the hearing, or electing not to attend after due notice thereof, parties are deemed to have stipulated to the Commissioner serving as a Judge Pro Tem for the entirety of the case. See CRC 2.816.

8:30 a.m.

- 1. Estate of Stevenson (PR12381).** This is a petition to approve accounting, allow compensation, and distribute the estate. All appears to be in order, except that notice is unclear. The notice filed 11/27/24 only contains the first page, so there is technically no notice to the heirs shown. In addition, the notice filed 12/28/23 includes thirteen (13) persons, which is more than the described four heirs – so this Court just wants to be sure that heirship is correct. See Probate Code §§ 44, 8110(a).
- 2. Estate of Nies (PR12559).** No appearance is necessary. This is a petition to open a probate estate and for issuance of letters of administration. A review of the petition and related filings confirms substantial compliance with all statutory requirements, save perhaps for the fact that Kenneth technically failed to waive notice and does have a qualified period of redemption under federal law. He is entitled to notice until such time as he files a waiver of notice. Otherwise, Court intends to set §8800 and §12200 review hearings.
- 3. Estate of Fullam (PR12551).** In or about September of 2010, Charles Fullam (hereinafter “decedent”) seems to have acquired an ownership interest in APN 091-190-041-000. His vesting deed indicated that he was married, but that he was taking title as his sole and separate property. The petition includes evidence showing his ownership as recently as June of 2018 (there is no reference to the property in either the 2022 will or the 2022 trust). He died in September of 2024. Petitioner purports to be his lawful spouse, which is circumstantially supported by decedent’s will identifying her as such. The will pours the real property into a trust, which calls for a distribution to petitioner if living, and if not to Eilidh Maclean-Gillingham. Although the trust purports to be a joint trust, the absence of petitioner’s signature is of no import since decedent was free to create his own trust controlling distribution of his own assets, one of which was the residence. See §§ 15200 *et seq.* With a successful *Heggstad* petition, the real property goes into the trust and comes back out belonging to petitioner (since she is still living). With an unsuccessful *Heggstad*, the property remains in decedent’s intestate estate and passes via §6401 – petitioner says sub (a) because the property is community property, but there is no evidence provided as to when the property was acquired, when they were married, or if the community has any interest therein. Compare *In re Brace* (2020) 9 Cal.5th 903, with *Estate of Wall* (2021) 68 Cal.App.5th 168, 175. If the real property was decedent’s separate property, as the deed suggests, then petitioner is entitled to ½ of the property, with the other half going to decedent’s siblings (see §6401(c)(2)(B)). Court will require original vesting deed, proof of current titling, and marriage certificate, or disclaimers from Eilidh, Cathy, Mary and John.

Department 5 Probate Notes for Friday, January 24, 2025

Probate Notes are not tentative rulings. Parties and counsel are still expected to appear for the hearings unless the Probate Note specifies otherwise. Unless indicated otherwise, all parties and counsel are authorized to appear via Zoom using this link: <https://tuolumne-courts-ca-gov.zoomgov.com/j/1615813960?pwd=NTRMT0NwMDg5cnlYdzZ6VnBXWWFsUT09>. [Meeting ID: 161 581 3960; Passcode: 123456]. All matters set for hearing in Department 5 are presumptively assigned to that department for all purposes. Parties retain the right under Cal. Const. art VI §21 to decline consent to the Commissioner serving as a Judge Pro Tem by so stating clearly at the outset of the first hearing in the case. By participating in the hearing, or electing not to attend after due notice thereof, parties are deemed to have stipulated to the Commissioner serving as a Judge Pro Tem for the entirety of the case. See CRC 2.816.

4. **Estate of Schrank (PR12350)** (Consolidated with PR12294). This is a petition to approve accounting, allow compensation, and distribute the estate. All appears to be in order, except that all of the estate res is tangible, which means no liquidity to cover statutory legal fees/costs. This Court is aware of the exceedingly generous agreement made by counsel to cut her fee exponentially, but that still does not explain how she is to be paid.
5. **Estate of Gallo (PR12259)**. This is a §12200 review hearing. This Court has recently approved petitioner's ex parte application to deposit sales proceeds into a blocked account to avoid the bond, without expressly finding that the referenced carve-outs for creditors in fact occurred. Court expects to see final petition very soon.
6. **Estate of Zimmerman (PR12558)**. No appearance is necessary. This is a spousal property petition involving APN 059-660-028-000. The petition includes evidence showing that the property was held in the decedent's name, as his sole and separate property, at the time of this filing (vesting deed plus current property tax bills). The will attached thereto includes sufficient statutory conditions to qualify for admittance. The specific devises made to grandchildren have already been satisfied outside of this proceeding, leaving only the home in decedent's estate. Since petitioner shares the same surname as decedent, and is identified in his will as his lawful spouse, that is sufficient to satisfy the standing requirement. Court intends to grant the petition.
7. **Estate of Desgeorges (PR12566)**. No appearance is necessary. This is a petition to open a probate estate and for letters of administration. A review of the petition and related filings confirms substantial compliance with all statutory requirements. Court intends to set §8800 and §12200 review hearings.
8. **Estate of Loflin (PR12533)**. In this proceeding, the petitioner has elected to proceed in pro per and has not done well in that regard. At the last hearing, this Court MacGyvered a temporary solution to the impending foreclosure of the estate's only asset with special administrative letters, but since that hearing petitioner has made no effort to cure any of the myriad defects in his original petition. Petitioner was encouraged to retain counsel, but as yet no word on that in the court file.
9. **Estate of Bain (PR12032)**. This is a 12200 review hearing. Petitioner to update the court on the related civil and UD actions.
10. **In re Patton Family Trust (PR12477)**. This is related to #12. This is a special proceeding to address alleged concerns regarding the existence and scope of competing trust instruments, pitting members of a blended family at odds with one another. A *Breslin*

Department 5 Probate Notes for Friday, January 24, 2025

Probate Notes are not tentative rulings. Parties and counsel are still expected to appear for the hearings unless the Probate Note specifies otherwise. Unless indicated otherwise, all parties and counsel are authorized to appear via Zoom using this link: <https://tuolumne-courts-ca-gov.zoomgov.com/j/1615813960?pwd=NTRMT0NwMDg5cmlYdzZ6VnBXWWFsUT09>. [Meeting ID: 161 581 3960; Passcode: 123456]. All matters set for hearing in Department 5 are presumptively assigned to that department for all purposes. Parties retain the right under Cal. Const. art VI §21 to decline consent to the Commissioner serving as a Judge Pro Tem by so stating clearly at the outset of the first hearing in the case. By participating in the hearing, or electing not to attend after due notice thereof, parties are deemed to have stipulated to the Commissioner serving as a Judge Pro Tem for the entirety of the case. See CRC 2.816.

mediation took place, without success. Parties were to have met and conferred on whether this (and the related) matter can be resolved using the summary dispute resolution procedures (§§ 1022, 1046, 9620) with ordinary briefing (CCP §§ 437c, 1010, 1005(b), 1005.5, and CRC 3.1306). See *Dunlap v. Mayer* (2021) 63 Cal.App.5th 419, 426. If not, parties to select trial date(s), and to advise whether either party is of the opinion that Cal. Const. Art. 1 §16 provides any right to a jury regarding any factual dispute involving a question of law herein. See, e.g., §§ 825, 17006. Parties to advise status of discovery, whether expert witnesses will be needed, and the likelihood of any dispositive motions on sub-issues (including any issues of duty per CCP §437c(t)).

11. **In re Matz Trust (PR12569)**. This is a petition involving the validity of a trust, accountings, elder abuse, removal and surcharge – to name a few central concerns. The Court file does not contain any proof of service on any interested or affected persons, but there is a request to kick out the hearing. Petitioner’s request to continue this matter “no less than 30 days” is granted. The new hearing date is 03/14/25 at 8:30 a.m. Petitioner to give notice to those entitled thereto.
12. **Patton Family Trust (PR12460)**. See #10.

10:00 a.m.

13. **Conservatorship of Barela (PR11388)**. No appearance is necessary. This was to be the annual review hearing, but the Court has yet to receive the investigative report. As such, the Court intends to continue the matter 2-3 weeks.
14. **Conservatorship of Acosta (PR12114)**. The Court, having received and reviewed the investigative report, intends to find by clear and convincing evidence that some degree of conservatorship remains warranted, and that the conservator is serving the conservatee’s best interests. However, without the VMRC update (referenced at page 2), this Court is unprepared to find by clear and convincing evidence that a general conservatorship is the least restrictive option for the conservatee’s protection. Court will consider appointment of counsel to determine whether the conservatee is a candidate for graduation.
15. **Conservatorship of Zimmer (PR12145)**. Court notes that there is a proposed order approving the Second Accounting, but no actual accounting in the Court file (likely an oversight). If petition can bring the accounting to the hearing, the issue can likely be dispensed with quickly. With regard to the medication issue and LPS threshold, parties to discuss current status and what next steps might be. See W&I Code §§ 5008(h)(1)(A), 5350(e), 5350.5(a).

Department 5 Probate Notes for Friday, January 24, 2025

Probate Notes are not tentative rulings. Parties and counsel are still expected to appear for the hearings unless the Probate Note specifies otherwise. Unless indicated otherwise, all parties and counsel are authorized to appear via Zoom using this link: <https://tuolumne-courts-ca-gov.zoomgov.com/j/1615813960?pwd=NTRMT0NwMDg5cmlYdzZ6VnBXWWFsUT09>. [Meeting ID: 161 581 3960; Passcode: 123456]. All matters set for hearing in Department 5 are presumptively assigned to that department for all purposes. Parties retain the right under Cal. Const. art VI §21 to decline consent to the Commissioner serving as a Judge Pro Tem by so stating clearly at the outset of the first hearing in the case. By participating in the hearing, or electing not to attend after due notice thereof, parties are deemed to have stipulated to the Commissioner serving as a Judge Pro Tem for the entirety of the case. See CRC 2.816.

16. **Guardianship of Alexander (PR12459).** This is a petition by concerned family members (paternal aunt and spouse) to establish a guardianship for a minor child over the strong objection from both biological parents. Since the proposed guardians have not assumed the role of *de facto* parent status, Family Code §3041 requires them to show by clear and convincing evidence that leaving custody in the hands of the biological parents would be detrimental to the child and that creating the guardianship is required to serve the best interest of the child. This Court is aware of the fact that both biological parents are facing current criminal charges. See CRM72969, CRM72269, CRM74538, CRM74626, and CRM74537. Based on the initial court investigative report, and the equivocal evidence of unfitness, this Court reminded petitioners of the risk associated with pursuing unmeritorious petitions (see Probate Code §1611). The updated investigative report confirms that the child has been regularly attending school, in clean clothes, and with proper hygiene. The latest issue appears to be that the parents are no longer receptive to extended family input, but that is the Constitutional right of parents to control contacts. However, the court investigator noted that the parents had been a challenge to reach and schedule the home visit. An updated report has since been filed, noting that phone calls with the proposed guardian have gone well and that the family may be advancing to in-person visits. Court will need an update on school attendance, but otherwise feels as though the bio parents have made strong strides toward a stable home for their child. Court intends to set trial, if that is what the guardians still want.

 17. **Guardianship of Harwell (PR12538).** This is a petition by the paternal grandparents for permanent letters of guardianship over their three grandchildren based on allegations of parental neglect. All three children have been the subject of juvenile dependency proceedings, and there was a DVRO between the proposed guardian and biological father (FL13439). Although it appears that the biological parents may have given consent to the guardianship in August, that has since been rescinded. Court still awaiting receipt of the court investigator's report before deciding if minor's counsel will be warranted.
- 1:30 p.m.**
18. **Marriage of Garibay (FL14359).** Contested hearing regarding parenting schedule. Since neither party filed a witness list, the Court assumes this to be a very short-cause matter.

 19. **Petition of KM (CV66657).** Non-confidential petition to change middle name. No proof of publication.