

Department 5 Probate Notes for Friday, January 31, 2025

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8:30 a.m.

1. **Estate of Herell (PR12109).** Court awaiting update on steps needed in order to move this administration to a close.
2. **Estate of Powers (PR12278).** No appearance is necessary. This Court, having received and reviewed petitioner's TUO-PR-125 with attachments, intends to find by a preponderance of the evidence that good cause exists to extend the period of administration of this estate for a period of 09 days. The §12200 review hearing will be continued to 05/02/25 at 8:30 a.m. Petitioner to give notice.
3. **Estate of Gurney (PR12545).** Court awaiting declination from co-executor, and DE-131's from at least one signatory on the codicil, but otherwise the petitioner appears sufficient to permit granting and setting of review dates.
4. **Estate of Conley (PR12563).** No appearance is necessary. The petition to admit the will to probate, and for Letters Testamentary, shall be granted. Court intends execute order, issue Letters, and set §§ 8800 and 12200 review dates.
5. **Estate of Thomas (PR12469).** This is a petition to open a decedent's estate. Unfortunately, the petition is not ready to be approved, as there are quite a few anomalies requiring cure. The petition indicates a request to probate a will, but then notes that the decedent died intestate. Petitioner must confirm. There is no request for IAEA authority, which petitioner would presumably like to have. There are no bond waivers attached, despite the reference. There are no other heirs listed in Para 8, but notice was provided to someone with the same surname as decedent. Petitioner resides out of state and did not include a permanent resident attestation required of out-of-state personal representatives. Para 3 does not appear to be filled out correctly. There is, also, no proof of publication.
6. **Estate of McCue (PR12413).** This is a petition to finalize and distribute the estate. The petition makes no mention of the 1994 Toyota 4Runner or the BofA checking account. There is also no direction as to how petitioner intends to remove decedent from the existing home loan. The I&A filed 07/12/24 shows \$309,802.27, of which \$7,000.00 (approx.) was liquid. The petition shows only \$1,500 remaining as liquid, despite only one creditor claim of \$1,561.58 paid. The proposed order must include a provision explaining to petitioner that he is personally liable for the legal fees and costs since the estate is not liquid; otherwise, the property will need to be sold in the estate to establish liquidity.

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7. **Estate of Briscoe (PR12302).** There remains a notable, and curious, disconnect in this petition for allowance and distribution. The fees sought, and costs reimbursed, are reasonable – but the distribution plan having the entirety of the estate go to the decedent’s trust via the Seventh or Eighth recital is unclear because the Fifth and Sixth Recitals reference numerous specific bequests which are not addressed. Since the will was made less than two months prior to her passing, it seems that decedent had in her possession all of those personal items listed, so where did those go? Is there an ademption/abatement issue (§§ 11750, 21117(a), 21402) which the Court needs to be sensitive to? See *Estate of Mason* (1965) 62 Cal.2d 213, 215; *Blech v. Blech* (2018) 25 Cal.App.5th 989, 1003-1004; *Brown v. Labow* (2007) 157 Cal.App.4th 795, 807-809; *Estate of Ehrenfel* (1966) 241 Cal.App.2d 215, 222-223. Counsel was to have filed a declaration explaining the trajectory of various pre-mortem gifts but as yet no declaration appears in the register of action.
8. **Estate of Smitheman (PR12560).** This is a petition to probate a will and for Letters Testamentary in favor of the nominated co-executors. Petitioners will be required to secure DE-131 from at least one of the subscribing witnesses due to a minor anomaly in the attestations (pagination). Otherwise, the petition and request for Letters appears to be in proper form and can be readily approved thereafter.
9. **In re Hardin Trust (PR12351).** When this matter commenced, it was an ordinary petition to compel an accounting and swap out the acting trustees. Shortly thereafter, the trustees petitioned for approval of the now-completed accounting, signaling a quick end to the dispute. Objections were filed, including a second request to remove the trustees. The matter was set for trial, but vacated at the request of the parties. No parties proposed a specific professional to take over, the acting trustees declined to voluntarily step down, and a majority of the parties objected to imposing upon the acting trustees a bond. This Court appointed a receiver to inventory the trust, which has been completed. The Court intends to give the acting trustees time to digest the proposed recommendations and to present to this Court a plan on how to move this administration to a close. Parties should be prepared to address any *factual* inaccuracies in the receiver’s report (the receiver, as an officer of the court, will not be subject to inquiry regarding opinions or recommendations at this time). Parties to advise whether this 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.
10. **In re Thors Trust (PR12568).** This is a petition to declare an untethered asset (APN 058-420-014-000) as one belonging to a trust. A trial court may make a transfer under §856 of property into a trust if the settlor(s) presently own(s) the subject property, the settlor(s) created a trust with themselves as trustor, and there exists sufficient evidence from which to

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conclude that the settlor(s) intended said property to be held in that trust. See *Carne v. Worthington* (2016) 246 Cal.App.4th 548, 558-560; *Ukkestad v. RBS Asset Finance, Inc.* (2015) 235 Cal.App.4th 156, 160-161; *Estate of Powell* (2000) 83 Cal.App.4th 1434, 1443; *Estate of Heggstad* (1993) 16 Cal.App.4th 943, 950-951. Here, petitioner contends that the settlors acquired and expressed an intention to hold APN 058-420-014-000 in trust based upon sweeping language in the trust, a pour-over will, and specific reference to the asset in the trust Schedule A. Although the only deed provided to this Court shows that ownership went from a “joint tenancy” to sole individual (permitting an inference that the property was in fact never actually in the trust), the weight of the reasonable inferences here suggest that the intention to hold in trust was present. Moreover, it does appear that sending the property through probate leads to the same outcome since decedent’s will directs that all of his assets pour into the trust. The only “hiccup” here is that the petition lacks evidence to show decedent’s contemporaneous ownership of the property to justify an order today directing it into the trust. Petitioner to advise.

- 11. Estate of Cascio (PR12396).** Petitioner request to dismiss pursuant to §12251 cannot be granted at this time, as the supporting declaration does not provide proof that the decedent’s residence was actually sold, let alone proof that the sale resulted in zero surplus equity. Petitioner’s DE-111 had the property yielding \$180,000 in surplus equity, so a claimed wash will need to be actually demonstrated.

Add-on: 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. Court extended Special Letters briefly to permit new counsel to substitute in.

10:00 a.m.

- 12. Conservatorship of Kuffler (PR12289).** This was to be the review hearing regarding the initial accounting, but no accounting is on file. Instead, counsel has on file a skeletal §2504 petition for authority to bind the conservatee to a personal injury settlement agreement. Pursuant to §2504(c), “court approval is required for the compromise or settlement of any of a claim of the conservatee for physical or nonphysical harm to the person.” Although technically the approval must come from the civil court (see §2505(a)), in small courthouses such as this it is often handled in the probate department. Notice must be provided to all interested parties “at least 15 days before the day of the hearing,” (§2506), which is why it

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cannot be heard on shortened notice. The petition must show “the advantage of the compromise [or] settlement” to the conservatee” in order to be approved. *Id.* Petitioner to advise whether the insurance company will oppose the petition.

13. **Conservatorship of Tolhurst (PR11138).** No appearance is necessary. The Court, having received and reviewed the Fifth Accounting, intends to find by a preponderance of the evidence by that the accounting is approved in all particulars, and that a new bond should issue in the amount of \$52,000. Court will set the annual accounting review date. Petitioner is encouraged at this time to give serious consideration to a H&S §103455 petition.
14. **Claim of CMP (PR12546).** No appearance is necessary. This is a petition to approve compromise of a minor’s claim, arising from a “t-bone” automobile accident. Any interested and fully competent person may apply to serve as guardian ad litem, provided that there are no actual or potential conflicts of interest. CCP §372. The minor’s mother seeks *de facto* appointment (there is no actual GAL application on file), and that is granted because it appears she also has primary “care, custody, or control of the minor.” Probate Code §3500. In terms of the merits, the petition to compromise must include a full disclosure of all information that has any bearing on the reasonableness of the settlement reached. See CRC 7.950; in accord, *Chui v. Chui* (2022) 75 Cal.App.5th 873, 903-904; *Pearson v. Superior Court* (2012) 202 Cal.App.4th 1333, 1337; *Espericueta v. Shewry* (2008) 164 Cal.App.4th 615, 627. Although this Court generally needs to see the policy limits for both the at-fault driver and the driver of the car in which the minor was riding, a review of the medical records permits the conclusion that the settlement amount is fair. Finally, although counsel sought to justify a 25% fee for the work in this case, there was no CRC 7.955 declaration providing support for that. Best this Court could tell, there was no dispute as to liability, no litigation, and no effort to exhaust the underlying policy and possibly reach UIM. Courts have discretion to award what is reasonable under the circumstances, and are not required to give blind allegiance to amounts set forth in contingency fee agreements. See Probate Code §3601(a); CRC 7.955(a)(2) and (b); CRPC 1.5; in accord, *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175-1178; *Gonzalez v. Chen* (2011) 197 Cal.App.4th 881, 885-886; *Goldberg v. Superior Court* (1994) 23 Cal.App.4th 1378, 1382; *Ojeda v. Sharp Cabrillo Hospital* (1992) 8 Cal.App.4th 1, 17; in accord, *L.C.C. by and through Callahan v. United States*, WL16579320 at *3-4 (S.D. Cal. 2022). Since counsel was already receiving an adequate fee from Mother’s claim, the fee here was adjusted to \$1,500. Counsel did not object. The petition is approved.
15. **Guardianship of Duncan (PR11768).** The GC-251 is missing page 3 and any attachments.

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1:30 p.m.

16. **Petition of JFR (CV66734).** Nonconfidential petition to change first name. No proof of publication in the court file.

17. **Petition of JW (CV66681).** Non-confidential petition to change entire name.