

Department 5 Probate Notes for Friday, February 7, 2025

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The Court extends its apologies for the tardy posting of these probate notes, but on occasion the press of business is just too great, even for this bench officer.

8:30 a.m.

1. **Estate of Madrid (PR12308).** This Court previously granted petitioner's request to extend the presumptive 12-month period for administration, and set this date for a review hearing. There is no updated status report in the court file, nor is there a petition to distribute the estate. Petitioner to advise.
2. **Estate of Ross (PR11991).** No appearance is necessary. Before the Court this day is a review hearing pursuant to §12202, as well as an OSC re sanctions pursuant to §§ 12204 and 12205. Yesterday, this Court received a petition for final distribution, with a hearing date for this week. The presence of the final petition in the Court file will moot the review hearing, and cause this Court to vacate the OSC. Any concern regarding surcharge sanctions will be taken up at the hearing on the petition itself, which cannot proceed this week because §11601 requires "at least 15 days" notice on any final petition. Court intends to continue to 03/14/25 @ 8:30 a.m. and to require proof of timely service beforehand.
3. **Estate of Coane (PR12339).** No appearance is necessary. The Court, having received and reviewed petitioner's TUO-PR-125, intends to find by a preponderance of the evidence that good cause exists to extend the time for administration of this estate. Court will set a §12201 review hearing for 05/09/25 @ 8:30 a.m.
4. **Estate of Hayes (PR11917).** Counsel to advise whether the proposed distribution needs to account for the \$35,000 to Russell in CV64343. Otherwise, the petition can be granted.
5. **Estate of Pacheco (PR12438).** No appearance is necessary. The Court, having received and reviewed the petition to allow fees and approve the distribution plan, will be approved.
6. **Estate of Light (PR12495).** No appearance is necessary, as a final I&A is on file.
7. **Claim of J. Webster (PR12578).** Before the Court this day is a petition to approve compromise and release of a minor's personal injury claim, stemming from a serious collision in March of 2023 on SR-49. An impaired driver (SC), coming from the opposite direction, crossed the center line and crashed into the Webster family vehicle. Although the minor suffered comparatively minor injuries, his sister died in the crash.

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Standing. There are only three persons authorized by law to compromise a minor's injury claim: (1) the minor's legal guardian (Prob. Code §§ 2401, 2451, 2462); (2) the minor's appointed guardian ad litem (CCP §372(a)(2)); and (3) a parent having primary care, custody, or control of the minor (Prob. Code §3500). The petition here was filed by the minor's parent, but there is no indication (usually in para 20) about her authority to act unilaterally on behalf of the minor child. This will need to be clarified up.

Merits. The settlement reached on behalf of a minor is not effective without court approval. Prob. Code §§ 2504(b), 3500(b). The petition must be verified, presented using the Judicial Council forms, signed by an attorney of record, and 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. According to the petition, the minor was asleep at the time of the accident (no trauma prior to impact), suffered only soft-tissue injuries, and has since fully recovered from any physical effects thereof. His most serious injury appears to have been a ligament strain at C2-C3, which appeared via MRI. He had a full battery of radiographic imaging at the hospital, amassing a medical bill in excess of \$128,000, but had very little actual treatment following his release from the hospital. There is no question that the hospital over-treated the minor, apparently because he arrived at the hospital with good insurance. Nevertheless, insurance has absorbed 90% of those charges. Based on those factors, this Court finds that the settlement amount of \$41,000.00 is reasonable.

Fees and Costs. The trial court may make orders relating to the reimbursement of medical expenses, litigation expenses, and reasonable legal fees – with the balance presumably delivered to the petitioner for deposit into various secured accounts. See Probate Code §§ 3601-3604. Reimbursement to insurance in the amount of \$12,324.06 is reasonable, except that petitioner indicates the existence of a UIM policy that has yet to pay out. It is expected that any UIM policy still at risk after a \$400,000 gross settlement would have a sizable med-pay limit, and for that reason no reimbursement of that \$12,324.06 is authorized to take place just yet. That must await resolution of the UIM payout. Finally, there is counsel's request for a 33.33% legal fee. Best this Court could tell, there was no dispute as to primary liability to capture the initial \$300,000, and no litigation needed to capture another \$100,000 from the grandparents who furnished the alcohol. It does not appear from the declaration that counsel exhausted the grandparents' homeowners' policy, and as noted there has been no effort yet to secure the 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

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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 non-minor claimants, the fee that counsel may recover here shall be 15% of the net balance remaining after all medical liens have been fully satisfied. That amount shall be distributed to the trustee and safely invested for the benefit of the minor subject to the prudent investor standards applicable to all fiduciaries. A bond will be required, payable by the trustee himself.

Pro Hac Vice. Pursuant to CRC 9.40, the application cannot be approved without proof of service on the State Bar and proof of having made the \$500 payment, neither of which appear from a review of the court file. However, assuming the fee has not yet been tendered, it is not necessary to secure pro hac vice admission since local counsel is more than qualified to handle any appearances needed for this proceeding.

8. **Claim of B. Webster (PR12579).** See #7.
9. **In re Rebero Trust (PR12564).** 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. Parties to advise anticipated scope/duration of discovery and when the matter will be ready for trial.

10:00 a.m.

10. **Conservatorship of McLaughlin (PR12309).** No appearance is necessary. This Court, having received and reviewed petitioner's request to waive accounting, finds that good cause exists to waive any formal accounting. Court intends to set biennial accounting requirement and revisit waiver each accounting period.
11. **Conservatorship of Fuego (PR11626).** No appearance is necessary. This Court, having received and reviewed the accounting, finds that the proposed allowance for fees and bond is acceptable. Bond to be posted within 30 days. Court will require annual accountings for the foreseeable future.
12. **Guardianship of Phillips (PR12462).** This is a petition to terminate a guardianship, filed the guardian himself. Ordinarily a guardian seeking to end their service would resign,

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especially when both biological parents consent to the termination. See §2660. Either way, the court investigator has been appointed to determinate the current living arrangement and the best interests of the wards. Court intends to continue the hearing to await the report.

13. **Guardianship of Burdick (PR12254).** No appearance is necessary. There having been no petition filed to extend the guardianship, this guardianship has terminated by operation of law.
14. **Guardianship of Zukal (fka Underwood) (PR10766).** This is a request to transfer a guardianship to the maternal grandmother. The request makes sense given that (1) the ward has resided full-time with the maternal grandmother for a substantial period of time (Family Code §3041) and (2) wards are supposed to be raised in a permanent stable environment (Probate Code §1610(a)), which is hard to control for when the ward does not reside with the guardians. A guardian may at any time tender a resignation from the office upon a noticed motion, which resignation “shall” be accepted “when it appears proper.” Probate Code §2660. However, appointment of a successor guardian requires “notice and hearing as in the case of an original appointment of a guardian.” Probate Code §2670. Ideally, the hearing on the resignation and the hearing on appointment of the successor should occur together, and the Court has no actual petition from the maternal grandmother commencing a substitute guardianship. The investigative report is favorable to the transfer, so if grandmother is present and willing to complete the required forms, the transfer can occur.
15. **Conservatorship of Martin (PR12325).** No appearance is necessary. This Court, having received and reviewed the court’s investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory requirements for a general conservatorship, that a general conservatorship remains the least restrictive alternative for the conservatee’s protection, and that the conservator continues to serve the conservatee’s best interests. Court intends to set the annual review hearing date.