

## Department 5 Probate Notes for Friday, February 21, 2025

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### 8:30 a.m.

1. **Estate of Diaghilev (PR12393).** No appearance is necessary. This is the review hearing for compliance with Probate Code §8800. A final I&A is already on file.
2. **Estate of Coane (PR12339).** This purports to be a petition for new letters of administration following the untimely passing of the acting executor. Although proof of his passing has not been provided to this Court, Probate Code §8522(b) informs the parties that we look first to the will for succession. Thereat, at Para 4.2, the decedent nominated Wells Fargo Bank to serve as executor if Robert should become unable to serve (as he has). Though it was hard to find in the papers filed, there is indeed a declination to serve from Wells Fargo. That leads the parties to Probate Code §§ 8440 and 8441 – which informs that the individual taking the largest share of the estate should be given priority for appointment as administrator with will annexed. That person is Jeffrey (see Trust Sec. 5.3(a) and 6.2(b)). It does not appear that he has declined to serve – so that will be needed. In addition, since the will only waives the bond for Robert and Wells Fargo (see Para 4.3), there must be a bond waiver from all beneficiaries (see §8481(a)(2)). As it relates to a trust, the term “beneficiary” means “a person who has any present or future interest, vested or contingent” in the trust res. Probate Code §24(c). The trustee is not a person with an interest in the trust res sufficient to waive bond for himself, let alone for all of the beneficiaries under the trust (of which there are many). A bond will be required. However, should petitioner seek instead special limited administrative powers under §8544 for the sole purpose of completing a few *de minimus* administrative steps left behind by Robert before his passing, such letters can be issued without notice (§8541) and often times without bond if property is simply being organized for quick distribution (§8543).
3. **Estate of Ward (PR12198).** No appearance is necessary. The Court, having received and reviewed the TUO-PR-125, intends to find by a preponderance of the evidence that good cause exists to extend administration of this estate another 90 days. Court intends to set another §12201 review hearing for 05/23/25 at 8:30 a.m. If a petition for final distribution is on calendar prior thereto, failure to appear thereat shall have no adverse consequences.
4. **Estate of Lane (PR12556).** This summary spousal petition is not ready for approval. In order to have standing to bring such a petition, it must first be shown that the petitioner qualifies as a “surviving spouse.” See Probate Code §§ 78, 13650(a). In other words, there must be competent evidence sufficient to show that petitioner and decedent were lawfully married at the time of his passing. Although a lawful marriage in Utah might be similarly lawful in California (see Family Code §308), that is not a forgone conclusion. See, e.g., *Marriage of Elali & Marchoud* (2022) 79 Cal.App.5th 668, 683-686. This Court is free to

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inquire into the validity of the Utah marriage, and is curious given that decedent and petitioner had been California residents when the Utah post-mortem petition was commenced. The Utah file and marriage certificate/order will need to be filed here. Separate from the standing question is the lack of proof regarding decedent's *contemporaneous* ownership of the real and personal property. For example, the reference to a grant deed from 1999 is insufficient to demonstrate by a preponderance of the evidence "the facts upon which the petitioner bases the allegation that all or a part of the estate of the deceased" passes to her without evidence of what he actually (still) owned at the time of his passing. For real property, a litigation guarantee or preliminary title report will do the trick. For personal property, registration cards are sufficient.

5. **Estate of Richesin (PR12136).** At the hearing on 01/10/25, counsel for petitioner was informed via probate note that the petition for final distribution was approved, subject to qualifying language in the proposed order confirming petitioner's obligation to refinance the property out of decedent's name. No proposed order was submitted to this Court, so the matter lies in vestigial limbo.
6. **Estate of Fortune (PR12502).** No appearance is necessary. This is the review hearing for compliance with Probate Code §8800. A final I&A is already on file.
7. **Estate of Vivit (PR12549).** This is a petition to determine succession to real property, filed 11/14/24 and set for hearing on 01/17/25. Between the time of commencement and hearing, the law changed regarding these kind of petitions. In particular, the Legislature saw fit to amend Probate Code §13151 by limiting succession petitions to the decedent's primary residence only. The legislative history does not provide much guidance as to why legislation increasing the cap to \$750,000 (a good thing) also reduced the nature of assets amenable to these petitions (a bad thing).

Retroactivity in ordinary jurisprudence can be a fairly complex thing, but not so much in probate land. We have a statute that controls retroactivity. Probate Code §3(c) provides in pertinent part as follows: "a new law applies on the operative date to all matters governed by the new law, regardless of whether an event occurred or circumstance existed before the operative date, including, but not limited to, commencement of a proceeding." In other words, retroactivity is presumed. But then §3(d) goes on to suggest some wiggle room by providing, in pertinent part, that "if a petition is filed before the operative date, the contents (and notice requirements) are governed by the old law but any subsequent proceedings concerning the petition, including a hearing, an order, or other matter relating thereto is governed by the new law and not by the old law." In other words, retroactivity is substantive, not procedural. Finally, §3(h) extends the fullest degree of wiggle room by

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proving in pertinent part that “if the court determines that application of a particular provision of the new law in the manner required by this section would substantially interfere with the effective conduct of the proceedings or the rights of the parties in connection with [a] circumstance that existed before the operative date, the court may apply the old law to the extent reasonably necessary to mitigate the substantial interference.” As explained by the Supreme Court in *Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1138:

“The provisions of Probate Code §3(h) comport with due process by allowing a party affected by a new statute to show why, under the circumstances presented, justice requires the application of former law. In weighing such a claim, we consider the significance of the state interest served by the law, the importance of the retroactive application of the law to the effectuation of that interest, the extent of reliance upon the former law, the legitimacy of that reliance, the extent of actions taken on the basis of that reliance, and the extent to which the retroactive application of the new law would disrupt those actions.”

Turning to the issue at hand, decedent died 07/26/24. Applying the statutory grace period of 40 days, this petition for succession could have been filed any time from mid-August onward. Had it been filed at that time, it would have been heard and decided well before the change to §13151 took effect. In fact, with a filing date of 11/14/24, a hearing could have – and probably should have been – been set to occur prior to the new year. See §13153. Perhaps Counsel should have been aware of the changing law and requested via ex parte application an order advancing the hearing date, as has occurred in other cases we have here in Dept. 5. Nevertheless, this is a small asset (roughly \$65,000 in value) with no objection from anyone regarding the substantive request for succession. The “contents” of this petition were proper when filed because it sought to transfer assets below the fiscal cap of §184,500, and – as noted – this Court did not find anything substantive in the Legislative history behind the reasoning to limit these petitions to just the decedent’s primary residence. The premise behind *raising* the cap from \$184,500 to \$750,000 was to *expand* the use of these petitions and streamline transfer of homes, but why narrow the use of the petition to just the primary residence and nothing else? It would have been quite easy to raise the cap for a primary residence, and leave the lower cap for all other assets – and perhaps that was the original idea – but as framed it seems someone threw the baby out with the bathwater. Thankfully, §3(h) gives this Court, and the parties, the needed wiggle room. Applying the new law here would likely relegate a very small transfer to ordinary probate, complete with publication, accounting, structured petitions, administrator fees, and statutory legal fees – making the entire process unwieldy. As such, this Court intends to utilize the old law.

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### 10:00 a.m.

8. **Guardianship of Hickie (PR12163).** No appearance is necessary. There being no petition to extend the guardianship beyond the ward's 18<sup>th</sup> birthday, this guardianship has now expired by operation of the law.
9. **Guardianship of Brinkman (PR10808).** No appearance is necessary. The Court, having received and reviewed the GC-251 with attachments for both wards, intends to find by a preponderance of the evidence that the guardianship remains necessary or convenient, and that the guardians continue to serve the wards' best interests. Court to set review date.
10. **Guardianship of McKelvey (PR11888).** This is an annual guardianship review. Pursuant to Probate Code §1513.2(a), every year the guardian shall complete and return to the court a status report (GC-251). The court clerk is required to provide a reminder to the guardian, along with a blank GC-251, which did occur herein on 11/01/24. Based on prior reporting, it does appear that the guardianship remains necessary/convenient, and may be temporary carried over until a report and order are completed. Guardian to advise as to the status. If Guardian does not appear, Court will release the court investigator into the wild at guardian's expense. Probate Code §1513.1(a).
11. **Guardianship of Cox (PR12392).** Inquiry whether a guardianship of the estate remains necessary or if the funds in the blocked account can remain there without access until the ward reached the age of 18. If the former, a permanent guardianship will need to be established, with annual reporting/accounting.
12. **Guardianship of Garner (PR12361).** This is a paternal grandparent guardianship involving one child, established via consent, and the subject of numerous court hearings over the past year. Before the Court this day are the following new matters: (a) Guardians' TECO filed 12/11/24 seeking an emergency order suspending bio dad's visits until further order; (b) Guardians' RFO filed 12/11/24 to change the visitation schedule agreed to with bio dad as part of the 09/13/24 global settlement; (c) Bio dad's second petition to terminate guardianship, filed 12/11/24; (d) Bio dad's third petition to terminate guardianship, filed 12/16/24; (e) Guardians' TECO filed 01/03/25 seeking an emergency order suspending bio dad's visits based on DV with new wife; and (f) Bio dad's OSC re Contempt filed against guardians for allegedly failing to facilitate agreed-upon visits, filed 01/20/25. The Court intends to re-interview the child, utilizing a vetted list of questions provided by the parties, and to secure a formal recommendation from minor's counsel regarding the petition to terminate. The Court further intends to schedule a full evidentiary hearing on the matter, in the hopes of putting all the fighting to rest.

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### 1:30 p.m.

13. **Marriage of Hendrix (FL17625).** OSC re sanctions directed at H for failing to submit pension statements as ordered; W filed new OSC re sanctions re failure to pay spousal support as agreed.
14. **Patterson v. Weldon (CV66305).** No appearance is necessary. Based on defendants' CMC statement, it appears that the parties may be negotiating a stipulation to return the case to Dept. 1, and need additional time to complete that process. Court intends to continue the CMC to 03/21/25 at 1:30 p.m. in Dept. 5.
15. **Marriage of Radetich (FL18672).** Evidentiary hearing on petitioner's DVRO.

### 4:00 p.m.

16. **Guardianship of Meek (PR11073).** This is a consensual petition to terminate guardianship. Court is still awaiting signed consents and court's investigative report before undertaking a brief hearing to confirm best interests.
17. **Guardianship of Jones (PR12098).** This is a consensual petition to terminate guardianship. Court is still awaiting signed consents and court's investigative report before undertaking a brief hearing to confirm best interests.