Department 5 Probate Notes for Friday, March 28, 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 Coane (PR12339).** Before the Court this day is the continued hearing on a petition for successor letters of administration following the untimely passing of the acting executor. Since both Wells Fargo (see §8522(b)) and Jeffrey (§§ 8440, 8441) have declined to serve in Robert's stead, Jeffrey's nominee (Mr. Nixon) is entitled to stand in Jeffrey's stead (§8465). Mr. Nixon has proposed a bond in the amount of $139,139.78 – which mirrors the amount set forth in the DE-160 filed by his predecessor on 05/31/2024, but is quite a bit different from the amount Mr. Nixon set forth in his own petition filed 01/15/2025. Since Mr. Nixon is seeking "full IAEA authority" to act during his tenure, a bond issued by an admitted surety insurer shall be the estimated value of the estate personal property, plus (i) the estimated value of decedent's interest in the real property authorized to be sold under the IAEA, and (ii) the estate's probable annual gross income. See §10453(a). Since there is no real property or income-producing property in the estate, the amount of the proposed bond appears to be reasonable.

2. **Estate of Gallo (PR12329).** This is a §12200 review hearing, with a strong indication that the final petition would already be on file. It is not.

3. **Estate of Gurney (PR12545).** This is a probate action in which Letters were issued not long ago. A final Inventory & Appraisal is already on file, obviating the need for the upcoming §8800 review hearing on 06/27/2025. Instead, before the Court this day is a petition filed 02/25/2025 by objector DeAnna Armario to challenge the Codicil to the Last Will dtd 08/15/2022. The Objector is correct that the codicil should not have been admitted to probate due to the lack of sufficient statutory formality or subscribing witnesses, and that it was this Court's intention on 01/31/2025 to expressly admit only the will into probate and reserve determination on the codicil for subsequent proceedings. Upon closer inspection of the court file, it does appear that an anomaly exists between the Minute Order of 01/31/2025 (holding back the codicil) and DE-140 submitted by counsel and signed by the Court (including the codicil). Although the inclusion of the codicil in the DE-140 order was an error curable via *nunc pro tunc*, the petition to revoke was filed by a person with standing (§8270) and was commenced within the applicable statute of limitations (§8270), which in this case ran from the date the order was actually served on the parties. See *Wolfson v. Superior Court* (1976) 60 Cal.App.3d 153, 159-160. As such, rather than exalt form over substance, this Court will require a preliminary response from petitioner's counsel as to whether petitioner and the remainder of the beneficiaries intend to engage the litigation machinery to (1) confirm the basic validity of the Codicil sufficient to permit its righteous admission into probate and (2) defend against the claim that decedent lacked the requisite degree of competence to make that testamentary change in 2022. If so, the nunc pro tunc adjustment shall be made, and petitioner will be required to authenticate the Codicil before any additional steps will be taken.

4. **Estate of Johnson (PR12510).** No appearance is necessary. Before the Court this day was to be the §8800 review hearing, but since a final I&A is already on file, there is no need for any formal hearing.

5. **Estate of Areias (PR12478).** No appearance is necessary. Before the Court this day was to be the §8800 review hearing, but since a final I&A is already on file, there is no need for any formal hearing.

6. **Estate of Lane (PR12556).** Before the Court this day is the continued hearing on a spousal property petition. The secondary issue left open from the earlier hearing was proof that the decedent retains contemporaneous ownership of the assets subject to this petition, to wit: APN 089-082-012-000; BofA #2740; 2006 Honda motorcycle; 1987 MasterCraft Boat; 2009 Suzuki Motorcycle; 2015 Ford F150. Petitioner has supplemented her papers with Schedule F from her conservatorship accounting in 19PR186980, in which she serves as the conservator of decedent's estate (which apparently remains open awaiting a ruling in this spousal petition). Petitioner now notes that the boat, the motorcycles, and the BofA account are no longer in decedent's estate, and that the spousal petition should be amended to provide for transfer of only the real property in Soulsbyville and the Ford F150. Based on the preliminary report and the DMV registration, it would appear to this Court's satisfaction that both assets remain in decedent's estate.

   The primary issue, which remains a tricky one for sure, is petitioner's standing. In order to have standing to bring a spousal property 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. For example, although common law marriage has been abolished in California, a common law marriage solemnized in another state which recognizes them would be valid here in California so long as it is also valid in the state of issuance. *People v. Badgett* (1995) 10 Cal.4th 330, 363; *Knight v. Superior Court* (2005) 128 Cal.App.4th 14, 19.

   This Court invited petitioner to submit evidence of how it was that two individuals residing in California were "deemed to be married" in Utah. It seems that decedent was riding a motorcycle through Utah when he was struck by a vehicle, suffering grave injuries. Without directly saying as much, it appears to this Court that petitioner needed to establish direct standing to secure her own recovery, and utilized a special procedure in Utah to solemnize "common law" marriages. Before 1987, Utah did not recognize common law marriages. That all changed in with the enactment of §30-1-4.5 (later renumbered). See *Volk v. Vecchi*, 467 P.3d 872, 875 (Ct. App. UT 2020). Pursuant to Utah Code §81-2-408(1), "a marriage that is not

solemnized according to this chapter is legal and valid if a court establishes that the marriage arises out of a contract between two individuals who (a) are of legal age and capable of giving consent; (b) are legally capable of entering a solemnized marriage under the provisions of this chapter; (c) have cohabited; (d) mutually assume marital rights, duties, and obligations; and (e) who hold themselves out as and have acquired a uniform and general reputation as spouses." Elements (a) and (b) can be met in a vacuum, but elements (c), (d) and (e) can only be established with reference to Utah contacts. See *Volk*, and *Calsert v. Estate* of Flores, 470 P.3d 464, 472 (Ct. App. UT 2020). Since Utah has no residency requirement for obtaining a marriage license, it seems that lower courts could overlook the requirement of establishing cohabitation, assumption and reputation *in Utah* as part of the inquiry. A review of Judge Bagley's Findings of Fact does not illuminate the answer because he references "attached" documents that petitioner here opted not to include in her filings. It seems to this Court that those filings were undoubtedly tell the story of whether (c), (d) and (e) pertain to Utah contacts or those in California. Clearly there could not have been any mutual consent to enter into a contract to create a common law marriage in a state that does not recognize common law marriages, so the Utah contacts are key. As such, it is not clear to this Court that the marriage would even be valid in Utah.

As a practical matter, if petitioner is *not* a lawful spouse under the laws of California, then decedent's intestate estate passes entirely to Jake. See §6402(a). Jake has assigned his "one-half beneficial interest" in decedent's estate to petitioner. An "assignment" of a beneficial interest is subject to court scrutiny pursuant to Probate Code §11604, and may qualify as a reportable (and possibly taxable) gift if it does not otherwise meet the requirements for a valid disclaimer. See Probate Code §278 et seq; IRC §2518(b) and Treasury Regs §25.2518-2(a); in accord, *Estate of Bennett* (2008) 163 Cal.App.4th 1303, 1311; *United States v. Irvine* (1994) 511 U.S. 224, 234-240; *In re Kolb*, 326 F.3d 1030, 1039-1041 (9th Cir. 2003); *United States v. Harris*, 854 F3d 1053, 1056-1057 (9th Cir. 2017). Jake's assignment is not expressly irrevocable and unqualified. See Probate Code §278 and cases interpreting the requirements. Moreover, an assignment assumes acceptance of the interest, but this Court has just learned that the assets Jake is assigning are still a part of decedent's *conservatorship* estate, not his intestate estate. Since this Court is expected to "inquire into the circumstances surrounding the execution of, and the consideration for" the assignment (§11604), Jake must be made aware that if this petition is unsuccessful he is entitled to inherit 100% of the home and Ford F150, not 50% of it as he seems to believe. This could alter his willingness to assign it all to petitioner. If petitioner intends to reside in the home, why not secure a life estate from Jake and leave ownership where intestacy would take it? Counsel should plan to have Jake available.

7. Estate of Anderson (PR12505). This probate action was released into the wild on 10/31/2024. Pursuant to Probate Code §8800, petitioner had four (4) months from then to file a final Inventory & Appraisal. A review of the court file reveals a vacancy where the DE-160 should be. Petitioner to advise.

8. **Estate of Loflin (PR12533).** Before the Court this day is the amended petition for administration of this intestate estate. Save for the curious degree of consanguinity set forth in Nomination line 22, all appears to be in order. Court intends to grant the petition and to set §§ 8800 and 1220 review dates.

9. **In re Renfro Family Trust (PR12575).** This is a petition to amend an irrevocable trust, brought forth by the surviving trustorr – with the express written consent of all beneficiaries – to amend the trust by removing the "Fifth" and "Sixth" articles requiring the creation of one irrevocable sub-trust and one revocable sub-trust upon the death of the first trustor. Pursuant to §15403, "if all beneficiaries of an irrevocable trust consent, they may petition the court for modification or termination of the trust." The only portion of this trust that is irrevocable is the decedent's sub-trust, and while this Court agrees that it need not be segregated in such a way as to miss out on the right to a step-up in basis upon petitioner's passing, "if the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust." §15403(b). Here, the trustors both agreed that the survivor between them "shall not have the authority or power to transfer, either directly or indirectly, assets of the Trust Estate into the name of the Surviving Trustor's subsequent spouse." See Fifth Article. It seems doubtful that the four children who gave their consent to remove the Fifth Article understood that Pamela could get married tomorrow and leave the entire trust res to her new spouse. This Court considers such agreements between spouses, when children are present, to be material, and will not adopt the change without a consent which actually expresses an understanding of this potential. Similarly with §15409, there is no question that the need for separate sub-trusts has been eliminated with the passage of time and increase in the estate tax credit cap. Although this change does not "defeat or substantially impair the accomplishment of the purposes of" any particular trust, making the change eliminates administrative and accounting headaches. This Court is open to allowing modification if the subsequent spouse condition is retained.

10. **Estate of Nichols (PR12016).** No appearance is necessary. The Court, having received and reviewed both the status report and counsel's declaration, intends to find by a preponderance of the evidence that good cause exists for another extension of the time for administration. Regarding the OSC, this Court is convinced that petitioner has indeed kept her foot upon the accelerator pedal and demonstrated sufficient diligence navigating a tedious local government agency process kindly described as labyrinthine to the common folk. Court intends to set a final review hearing for 06/27/2025 at 8:30 a.m.

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10:00 a.m.

11. **Guardianship of France (PR12603).** Before the Court this day is a petition to establish both a temporary and a permanent guardianship over the person of a young girl by her maternal grandmother and maternal uncle. No GC-212 from Uncle. Consent filed by bio mom. No word from bio dad. No notice to family. Proposed guardian may already have de facto status. Appoint court investigator. Inquire CRF76586 (full CPO from proposed ward) and CRM74906 (DV Misdo).

12. **Guardianship of Okelsrud (PR12397).** Before the Court is a petition by the guardian (paternal grandmother) to terminate her own guardianship in favor of restoring bio dad's parenting rights and duties. Court to appoint court investigator. Guardian must provide notice to bio mom.

13. **Guardianship of Trevino (PR10483).** Still waiting on paperwork from successor guardians. Hopefully they turn these in before ward ages out.

14. **Guardianship of Tracy (PR12582).** This is a petition for guardianship over one putative ward by that child's adult sibling and brother-in-law. Consent was provided by bio dad who lives in Missouri, but not by bio mom who has recently been in and out of incarceration. It is alleged that both bio parents are unfit. Bio mom is currently facing serious charges (CRF76719) and not likely to be parenting effectively anytime soon. Other family members have signed consents. Based on current residence of ward, presumption favoring temporary guardianship exists. Guardians wish to relocate to Ohio in a few months, and would like permission to do so. Court investigator recommends guardianship. Court to consider appointment of minor's counsel. NO decision re: relocation yet.

1:30 p.m.

15. **Petition of O'Rourke (PR12585).** No appearance is necessary. This is a confidential proceeding to secure relief from a firearms prohibition. The proceeding must be continued because the DOJ-BOF was unable to run its initial report, and the court investigator was not timely appointed to complete the internal report. Court intends to continue the hearing to 05/16/2025 at 1:30 pm.

16. **Guardianship of Shrader x3 (PR11901).** No appearance is necessary. Court intends to extend the guardianships through the hearings associated with bio dad's petition to terminate the guardianship, currently set for 05/02/2025 at 10:00 a.m.