Department 5 Probate Notes for Friday, April 25, 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 Eproson (PR12605). The Probate Code provides for summary procedures which by-pass traditional administration. Before the Court in this case is one such by-pass intended to permit a surviving spouse to obtain a judicial determination of property to which that spouse is entitled. That by-pass is codified at Probate Code §§ 13500 and 13650, which collectively provide that "when a husband or wife dies intestate leaving property that passes to the surviving spouse under Section 6401, the property passes to the survivor" provided that "all or a part of the estate is property passing to the surviving spouse" – among other statutory conditions. As noted in *Estate of Bonanno* (2008) 165 Cal.App.4th 7 (at 19-20):

> "The procedure established in Probate Code section 13650 is voluntary. It is helpful because although property may automatically pass to a surviving spouse without administration, some title companies and others may not clear or transfer title without a court order. Such petition also seeks to determine and confirm to the surviving spouse his or her one-half ownership interest in the community property or quasi-community property. Further, the petition seeks to determine, and thereafter confirm to the surviving spouse, property that passes to that spouse from the decedent. Thus, it addresses the decedent's interest in the community and quasi community, the decedent's full interest in his or her separate property, and any rights the surviving spouse may have in the decedent's separate property granted by will or intestate succession."

The petition herein is appropriate to declare that decedent's surviving spouse (petitioner herein) is entitled to a 1/3 interest in the subject real property by virtue of §6401(c). For that, reasonable minds cannot differ. The more complex question, which practitioners rarely address, is whether the summary by-pass options set forth in Division 8 should include a determination of the validity of an assignment. An "assignment" of a beneficial interest is subject to court scrutiny pursuant to Probate Code §11604, which is in the Administration of Estates section (Division 7), not Division 8. In fact, the petition must describe "the property of the deceased spouse" which is alleged to be passing, but an assignment is property belonging not to the deceased spouse but rather to the assignor. This is why an assignment 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). Petitioner and counsel should consider whether a traditional "back-dated" disclaimer from the children would yield the same merger of interests in petitioner, which is feasible since it would appear that the children never assumed any ownership interest or control over the subject parcel. This would avoid the issue of the assignment not involving property of the deceased spouse.

Counsel to discuss.

2. Estate of Jensen (PR12416). This is a petition to approve the proposed final distribution and allowance of fees and costs. A review of the petition, including the waivers and disclaimer, reveals no anomalies – save for one: the statutory fee basis. Although the real property appraised at $347,000, the closing statement reveals that the actual sales price for the property was $332,000. Had the commissioners been below 5%, perhaps the credit to buyer might have been adjusted elsewhere, but under the circumstances it was clearly a reduction in the sale price. Once the fee basis is adjusted, the petition can be approved.

3. Estate of Fullam (PR12551). Before the Court this day is the continued hearing on a spousal property petition involving the decedent's presumed principal residence. In order to effectuate a non-probate transfer of real property, the surviving spouse must demonstrate to the satisfaction of the Court that said property absolutely passes to the surviving spouse in accordance with §13500.

On 09/22/2010, Charles Fullam (hereinafter "decedent") took title to the subject property (APN 091-190-041-000) as "a married man as his sole and separate property." Although he was married to petitioner at the time, it appears from the transaction report that she deposited into escrow a quit claim deed (see Instrument #2010011716), which was recorded sequentially with the grant deed and mortgage deed of trust. Per decedent's will, the subject property was devised to the Charles E. Fullam and Geraldine A. Ward Revocable Trust, with petitioner serving as the executor. 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*. Petitioner has a life estate in the trust res, and upon her passing the trust res then goes to petitioner's niece Eilidh Maclean-Gillingham. Critically, the trust provides that "Any community property transferred to our trust will retain its character as community property during our lives [and] separate property transferred to our trust will retain its character as separate property." Art. I.C.

Charles died in September of 2024. An updated transaction history report shows that the subject property remains in Charles' name. It was never deposited into the trust. With a successful *Heggstad* petition, the real property would go into the trust and come back out belonging to petitioner (since she is still living). But only giving her a life estate. With an unsuccessful *Heggstad*, the property would remain in decedent's intestate estate and pass 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)).

It is therefore necessary to determine the character of the subject property. The general rule is that "all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property." Family Code §760. There are many exceptions to that rule, most notably use of separate property funds and transmutation. See, e.g., Family Code §§ 770, 850. An interspousal quit claim deed, like the one petitioner appears to have signed on 09/22/2010, is typically good enough to establish decedent's separate property interest. See *Marriage of Kushesh & Kushesh-Kaviani* (2018) 27 Cal.App.5th 449, 456-457. Moreover, in probate proceedings, the form of title, rather than the Family Code presumption, controls. See *Estate of Wall* (2021) 68 Cal.App.5th 168, 175. As such, this Court cannot make a finding that the property was community property. Decedent was free to direct the whole of the property via will into the trust, and was free to direct it through the trust to petitioner as a life estate, and thereafter to petitioner's niece in what would amount to a fee simple.

Since the initial two hearings, all of the siblings and the remainderman niece have deposited "assignments" of their respective interests into the court file. It is unclear whether this summary by-pass option set forth in Division 8 should include a determination of the validity of an assignment. An "assignment" of a beneficial interest is subject to court scrutiny pursuant to Probate Code §11604, which is in the Administration of Estates section (Division 7), not Division 8. In fact, the petition must describe "the property of the deceased spouse" which is alleged to be passing, but an assignment is property belonging not to the deceased spouse but rather to the assignor. This is why an assignment 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). However, given that all of the potential interests have effectively disclaimed and this Court can plainly see that, as disclaimers, the whole of this parcel would vest with petitioner, this Court shall treat the assignments as "back-dated" disclaimers for present purposes and treat petitioner as the sole beneficiary to the subject trust, that the trust can be revoked by petitioner, and that her petition herein is a de facto declaration of her intention to revoke the trust and receive the property outright via this summary by-pass.

4. Estate of Titchenal (PR12614). Before the Court this day is a petition for the issuance of Letters and IAEA authority to administer her father's estate. A review of the petition reveals no anomalies, save for one: the failure to include a nomination from her sibling, who enjoys co-equal status to serve as administrator in the action. See §§ 8465, 8467. As soon as Jennifer's nomination of Kimberley is received, the petition can be approved and §§ 8800/12200 dates can be assigned.

5. **Estate of Bettridge (PR12404).** Off-calendar.

6. **Estate of Hayes (PR11917).** No appearance is necessary. Revised final order was received and entered prior to today's hearing, so hearing can go off-calendar.

7. **Estate of Worsham (PR12557).** Before the Court this day is the continued hearing on an unopposed spousal property petition for real property technically referred to as APN 041-381-004-000. The petition must affirmatively show "the facts upon which the petitioner bases the allegation that all or a part of the estate of the deceased spouse is property passing to the surviving spouse." §13651(a)(3). Since the real property was acquired prior to marriage, it is presumptively separate. See Family Code §770(a)(1). There is no contemporaneous title run showing that it was ever transferred into the community, but a Modoc County Tax Collector bill for fiscal year 2024-2025 shows that the property remains in the sole name of decedent as an individual. Thus, it seems that the property passes in equal amounts to petitioner as his lawful spouse, and to his only child Justin. See Probate Code §6401(c)(2)(A). Since the initial hearing hereon, Justin has filed a disclaimer (§278) and effectively confirmed that he never acquired only possessory or controlling interest in the property. Based on that disclaimer, the only person in line to acquire any interest in the property is petitioner, and as such the petition may be granted.

8. **Estate of Bratcher (PR12436).** This is the continued hearing on petitioner's compliance with the requirement to provide a final Inventory and Appraisal within four months of securing Letters. Although a final Inventory and Appraisal has been submitted, petitioner must secure the consent of the other heirs to proceed in the "informal" way she has chosen, as her process is not Code-compliant. Petitioner needs to consider such requirements as fair market value (§8802) and waiver of the assigned probate referee (§8903).

9. **Estate of Benoit (PR12133).** This is an intestate administration in which the administrator has seemingly disappeared. When she took the oath of office back in June of 2022, she signed the DE-147 agreeing to work with counsel, make prudent investments, protect the estate assets, and bring the administration to a close in a timely fashion. She even posted a bond assuring her compliance with her fiduciary obligations. She has now been derelict for over a year. Who is minding the residence where decedent once lived? This Court shall either issue a citation for removal (§8500), find petitioner in contempt (§8505), or declare there to be a vacancy in office as a result of having abdicated the post (§8520). Either way, Counsel shall propose a successor administrator. Liability on the existing bond shall remain, and the bond shall not be exonerated (§8525).

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10. **Estate of Belletto (PR12514).** This probate action was released into the wild on 11/08/2024. 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.

11. **Estate of Jasper (PR12521).** No appearance is necessary. A final I&A is already on file, making this review hearing unnecessary.

12. **Estate of Lane (PR12556).** No appearance is necessary. The Court, having received and review the updated information, has issued a written ruling adopting petitioner's originally-proposed approach to this spousal property petition, and issued that order.

13. **In re Edixon Trust (PR12616).** This is a petition to declare certain real property an asset of a trust. Under normal circumstances, a request of this nature would be relatively simple, and governed almost exclusively by caselaw. See, e.g., *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. However, the trust instrument at issue here "shall be construed and governed in all respects by the laws of the Commonwealth of Virginia." See Art. XV. This seems a rather odd choice given that Exhibits B and C to the trust reference only real property assets in California, but that was the choice decedent made. As this Court has come to see in other cases, the *Heggstad* rule is followed in other states, but not all. Petitioner will be required to supply this Court with points and authorities addressing the issue of whether post-mortem funding of a trust would be permissible in Virginia. Court intends to continue the matter to permit sufficient time for this briefing, unless petitioner wishes to skip Virginia and run a §§ 15403/15409 petition instead.

14. **Estate of Rock (PR12601).** No appearance is necessary. Before the Court this day is a petition for the issuance of Letters and IAEA authority to administer his wife's estate. A review of the petition reveals no anomalies, though this Court is curious as to why petitioner was unable to secure bond waivers from the children – but it is of no genuine consequence. The petition can be approved and §§ 8800/12200 dates can be assigned.

10:00 a.m.

15. **Conservatorship of Mathis (PR11891).** Court is awaiting updated investigative report, but notes that at last year's conference the Court was closely monitoring a proposed graduation to a limited conservatorship.

16. Conservatorship of Jones (PR12552). Before the Court this date is the continued hearing on a petition to transition the temporary conservatorship into a permanent conservatorship – effectively authorizing the co-conservators to petition for permission to liquidate the conservatee's primary residence if need be. Objection is made by the conservatee's cohabitant "boyfriend" but an in-home placement plan has not been established. Court is awaiting APS report and updated investigative report.

17. Guardianship of Clement (PR11515). Court is awaiting submission of proposed 6th accounting for review and consideration.

18. Guardianship of Okelsrud (PR12397). Before the Court this day is the annual review of the guardianship. However, there is presently on calendar a petition by the guardian (paternal grandmother) to terminate her own guardianship in favor of restoring bio dad's parenting rights and duties. Court is awaiting proof of service on bio mom and an investigative report from the court investigator.

19. Claim of TS (PR12600). This is a petition to approve a proposed compromise and release of a personal injury claim belonging to a minor.

The first concern is 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));
Or
(3) the parent having care, custody, or control of the minor (Prob. Code §3500).

As for the second prong, 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; *Chui v. Chui* (2022) 75 Cal.App.5th 873, 905; *Williams v. Superior Court* (2007) 147 Cal.App.4th 36, 50; in accord, *Zhang v. Air China Limited*, WL8820871 at *2 (C.D. Cal. 2021).

Here, the petition was brought forth on behalf of the minor's mother. The petition does not provide any information regarding the minor's father, or whether the minor's mother has co-equal (if not majority) care, custody, or control. Petitioner should advise.

The next concern is merit. A 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* at 903-904; *Pearson v. Superior Court* (2012) 202 Cal.App.4th 1333,

1337; *Espericueta v. Shewry* (2008) 164 Cal.App.4th 615, 627. This is similar to the "ballpark" test for good faith settlements.

Here, given that the minor did not sustain any treatable injuries and has fully recovered from this dog incident, this Court is convinced that the settlement amount of $45,000 is well within the range of reasonable.

Finally, trial courts are obliged to scrutinize requests for fees and costs. Any request for legal fees must be supported by a declaration complying with the requirements of CRC 7.955, and informing the court of the nature of the services provided. Courts have discretion to award what is reasonable under the circumstances, and are not required to give blind allegiance to amounts set forth in any 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). The normal amount for a personal injury action without any real discovery or effort is 25%. In addition, counsel is only permitted to recover "hard costs" that are actually incurred and "reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation." See CCP §1033.5(c).

Here, because the petition is being run by insurance defense counsel, there are no fees or costs being sought.

20. Claim of M.S. (PR12621). This is a petition to approve a proposed compromise and release of a personal injury claim belonging to a person with a disability.

The first concern here is jurisdiction. Although compromise petitions can be filed in the probate division of the superior court, if there should be a need to enforce the settlement via CCP §664.6, that enforcement procedure only applies to settlements reached in "pending" actions and only CV65720 was "pending" when the settlement was reached. As such, when the underlying civil action is still active, the ordinary approach is to run the compromise petition through the civil case. However, if enforcement is of little concern, this Department is happy to proceed.

The next concern is standing. An agreement to compromise and release a personal injury claim belonging to a "person with a disability" (see Probate Code §3603) is not effective without court approval. See Probate Code §§ 2504(b), 3600 et seq. Although trial courts

can appoint a guardian ad litem to assist a "person with a disability" to navigate the litigation process (which appears to have already occurred in Dept. 1), "a court may not make an order or give a judgment pursuant to [§3600 et seq] with respect to an adult who has the capacity within the meaning of Section 812 to consent to the order and who has no conservator of the estate with authority to make that decision, without the express consent of that person." Probate Code §3613. In other words, while a GAL has authority to bind a *child* to a minor's compromise (see CCP §372(a) and Prob. Code §3500), there is no such automatic authority for a GAL to bind a "person with a disability" to a similar compromise. Either the "person with a disability" must give informed consent to the settlement, or – if that person does not have the required capacity to consent – the GAL must establish a temporary conservatorship of the estate (or bind the settlement using an existing Power of Attorney with existing authority under §4458).

Here, although the claimant's signature appears at Para 21 on the MC-350, the fact that it was from a separate fax with no header and no notary gives this Court minor pause. Since counsel advises that claimant is "largely recovered" from her stroke, and that her "disability" status may have actually resolved, her attendance at the hearing to confirm her willingness to proceed with the settlement will suffice.

The next concern is merit. A 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. This is similar to the "ballpark" test for good faith settlements.

Here, although this is a wrongful death case, the age of decedent, coupled with his overall health concerns and lack of gainful employment, make this the settlement amount of $475,000 well within the range of reasonable.

Finally, trial courts are obliged to scrutinize requests for fees and costs. Any request for legal fees must be supported by a declaration complying with the requirements of CRC 7.955, and informing the court of the nature of the services provided. Courts have discretion to award what is reasonable under the circumstances, and are not required to give blind allegiance to amounts set forth in any 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). The normal amount for a

personal injury action without any real discovery or litigation is 25%. In addition, counsel is only permitted to recover "hard costs" that are actually incurred and "reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation." See CCP §1033.5(c).

Here, although counsel's declaration does not provide a number of hours spent on the file to permit even a basic lodestar calculation, the fact that there were six depositions, a mediation, and several expert witness retentions, coupled with trial preparation, it seems reasonable to conclude that there were at least 250 hours invested. Using the standard hourly rate for an experienced litigator in this community ($375), that would put a lodestar somewhere close to $100,000. Given the difficulty of a wrongful death case of this nature, and the out-of-pocket of $18,000, an upward adjustment of 0.20 is warranted, making a baseline lodestar of $120,000. That comes to $60,000 for each plaintiff, which is not far off from what counsel is seeking. Moreover, if claimant is truly recovered from her disability and no longer a "person with a disability," counsel is not required to secure court approval for this settlement and this Court has no authority to intervene. Taking all of that into consideration, while this Court might normally look to a small haircut on the legal fees, the fees in this case can also be justified.

1:30 p.m.

21. Petition of AD (CV66635). Nonconfidential petition to change name.

22. Guardianship of Rivera (PR11862). Off-calendar.

23. Petition of CK (CV67019). Nonconfidential petition to change name.