

## Department 5 Probate Notes for Friday, May 3, 2024

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### 8:30 a.m.

- 1. Conservatorship of Valdez (PR10308).** Petitioner's §2647 petition for permission to reimburse legal fees and costs from the conservatorship estate is not ready for approval. A review of the court file fails to reveal any Inventory and Appraisal (TCSC Rule 6.09.0) or recent accounting (TCSC 6.14.0), which are customarily required when a successor conservator of the estate takes over. See §2632. In addition, the accompanying declaration does not provide sufficient information to determine compliance with §§ 2430, 2623, 2641 and 2645. Upon the filing of an I&A and simple accounting, this Court can revisit the request for legal fees associated with the substitution of a successor conservator. Court intends to continue the hearing and permit additional filings.
- 2. Conservatorship of Acosta (PR12114).** This was to be the hearing on the first accounting covering 06/02/22 through 06/01/23. Although §2620 does not prescribe the time period in which the conservator is to "present the accounting of the assets of the estate of the conservatee to the court for settlement and allowance," by local rule that hearing is to take place "within sixty (60) days after the anniversary date of the appointment." TCSC Rule 6.14.0.a. This accounting is now quite tardy, which now necessitates an OSC re: possible removal of the conservator per §§ 2620.2 and 2650(b). Court will consider appointment of legal counsel as well.
- 3. Estate of Stevenson (PR12381).** The Petition for Letters of Administration is still not ready for approval. Notice is to be published "with at least five days intervening between the first and last publication dates, not counting the publication dates." §8121(a); TCSC Rule 5.05.0.b.2. Publication occurred on 02/13, 02/16, and 02/17 – which is an insufficient period. In addition, although petitioner is entitled to appointment (§8461(b)), since there are others with equal priority, Court prefers to have nominations in hand (§§ 8465, 8467). Nothing has been filed since the 03/29/24 hearing, which suggests to this Court that the matter may be amenable to dismissal. Counsel to advise.
- 4. Estate of Ross (PR11991).** At the last hearing, the parties seemingly agreed to sell the estate asset. There is no §12200 report on file advising of the status, and no petition for final distribution. Counsel to advise.
- 5. Estate of Hale (PR6100).** No appearance is necessary. The amendment to the petition sufficiently satisfies the prior probate notes, and the petition is now ready for approval. Counsel is instructed to provide a proposed order consistent herewith.
- 6. Estate of Brierly (PR12433).** Pursuant to §13500, when a spouse dies testate and by his will devises all of his property to the surviving spouse, the property most often passes to the survivor without administration, irrespective of how the property might be characterizes for purposes of marital property laws. However, in this instance, petitioner seeks transfer of a financial account without regard to whether that account already has a POD designation or similar beneficiary provision which may be at odds with the proposed transfer. Petitioner advises that the account is in decedent's name alone, which raises the specter of a possible POD designation already.

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7. **Estate of McCue (PR12413).** No appearance is necessary. The supplemental papers have resolved the prior notes, and the petition is ready for approval. Court will issue the Order/Letters and set §8800/§12200 review dates.
8. **Estate of Rossman (PR12391).** No appearance is necessary. The supplemental papers have resolved the prior notes, and the petition is ready for approval. Court will issue the Order/Letters and set §8800/§12200 review dates.
9. **Estate of Tarone (PR12407).** No appearance is necessary. The supplemental papers have resolved the prior notes, and the petition is ready for approval. The request to waive bond is granted. Court will issue the Order/Letters and set §8800/§12200 review dates.
10. **Estate of Spreadborough (PR12343).** No appearance is necessary. The court file contains the required final I&A.
11. **Estate of Ramsgard (PR12135).** No appearance is necessary. The court file contains a petition for final distribution, set for hearing 05/17/24.
12. **Estate of Rhode-Moe (PR12247).** No appearance is necessary. The petition for allowance and distribution is approved in all respects. Counsel to submit proposed order thereon consistent therewith. Counsel is reminded that receipts will be required for ex parte discharge.
13. **Estate of Nichols (PR12411).** The Petition for Letters of Administration is still not ready for approval. Notice is to be published “with at least five days intervening between the first and last publication dates, not counting the publication dates.” §8121(a); TCSC Rule 5.05.0.b.2. There is no proof of publication. Petitioner also neglected to lodge the original will. See Prob. Code §8225 and TCSC Rule 5.12.0.
14. **Estate of Bauman (PR12419).** No appearance is necessary. The petition for Probate with Letters Testamentary is proper and complete in all respects. Court will issue the Order/Letters and set §8800/§12200 review dates.
15. **Matter of Paine (PR12421).** Pursuant to §13151, if a decedent dies leaving real property in this state and the gross value of the decedent's entire estate does not exceed \$166,250.00, decedent's lawful successor may file a petition for an order succeeding to the property, without administration. The petition here is not ready for approval because petitioner has not provided “the facts upon which the petitioner bases the allegation that the described property is property passing to the petitioner.” §13152(a)(4). There is no evidence showing that decedent ever owned a 50% interest in the subject property, let alone that the ownership interest still exists. In addition, given that box 10.c. was checked, this Court is unclear who those “other persons” might be since the only other person listed is already deceased. Supplemental papers will be required.

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16. **In re Allyn Two Trust (PR12420).** Petitioner seeks an order declaring a 1/3 interest in APN 085-390-007 an asset of the subject trust dtd 03/03/94. A court may make the requested transfer under §856 if the settlor presently owns the subject property, the settlor created a trust with him/herself as trustor, and there exists sufficient evidence from which to conclude that the settlor intended said property to be held in 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. Based on the exhibits attached to and incorporated into the petition, and the verified petition itself, it does reasonably appear to this Court that the settlor maintains a present interest in the subject property, and that it was the settlor's clear intention to hold her share the trust she created. See Evid. Code §702; *Forest Lawn Memorial-Park Ass'n v. Superior Court* (2021) 70 Cal.App.5th 1, 8-12. The petition is approved. Counsel to submit a proposed order consistent herewith.
17. **In re Diaghilev Trust (PR12393).** The Court acknowledges petitioner's concession that a trust controlled by Oregon law does not permit a postmortem transfer of assets (aka, *Heggstad*). While it does appear to this Court that such a mechanism could be extracted out of ORS §§ 130.220 and 130.225, it may be easier to simply proceed with probate (as counsel suggests). Petitioner is authorized to submit adjusted filings using the same case number. This case shall thereafter be known as Estate of Diaghilev for purposes of publication and filings.
18. **Mumford v. Tosti (CV59212).** No appearance is necessary. This is a motion to enforce a civil judgment by forced sale of real property. This is a civil action, and appears to have been set in this Department in error. The matter is transferred to Dept. 1 with a new hearing date of 05/24/24 at 8:30 a.m. Creditor to give notice.
19. **Estate of Nicholls (PR12016).** No appearance is necessary. The Court is in receipt of counsel's status report and concludes that good cause exists to extend administration of the estate. Court intends to set a review hearing for 90 days.
20. **Estate of Cascio (PR12396).** The Petition for Letters of Administration is still not ready for approval. Notice is to be published "with at least five days intervening between the first and last publication dates, not counting the publication dates." §8121(a); TCSC Rule 5.05.0.b.2. There is no proof of publication despite this Court's prior reminder.

**10:00 a.m.**

21. **Conservatorship of Stevenson (PR11972).** This was to be the hearing on the final accounting covering 09/01/23 through present day (until Letters are issued in PR12381). Although §2620 does not prescribe the time period in which the conservator is to "present the accounting of the assets of the estate of the conservatee to the court for settlement and allowance," (nor does CRC 7.575), the ordinary rule of thumb is four months. Counsel to advise.

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22. **Guardianship of Zwicker (PR11002).** No appearance is necessary, as this hearing is simply to confirm termination by operation of law.
23. **Guardianship of Heinze (PR12458).** This petition involves a nominated nonrelative placement. There is no notice in the court file, as required by §§ 1461.4 and 1511.
24. **Guardianship of Hamilton (PR12233).** Guardians to confirm where wards currently reside, and whether guardianship remains necessary or convenient.

### 1:30 p.m.

25. **Matter of Calabrese (PR12430).** Nonconfidential petition for relief from firearms prohibition.
26. **Marriage of Bell (FL10921).** Short cause hearing.
27. **Petition of Lumpkin (CV65941).** No proof of publication.
28. **Marriage of Sandor (FL14206).** Nonconfidential hearing to restore former name.

### 3:00 p.m.

29. **Petition of Britt (CV65930).** Confidential petition to change name.
30. **County of Tuolumne v. Randle (FL16502).** Confidential in-chambers conference.