

Department 5 Probate Notes for Friday, May 31, 2024

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. Conservatorship of Kipper (PR10894).** No appearance is necessary. This Court, having received and reviewed the confidential investigative report, will find by clear and convincing evidence that a conservatorship remains necessary for this individual, that a general conservatorship appears to be the least restrictive option for this individual giving his pronounced deficits, and that the conservator continues to serve in the conservatee's best interests. Court to set annual review date.
- 2. Conservatorship of Villasenor (PR9919).** No appearance is necessary. This Court has not yet received the confidential investigative report, but notes from prior hearings that there was clear and convincing evidence that a conservatorship was necessary for this individual, that a general conservatorship appeared to be the least restrictive option for this individual, and that the conservator was serving in the conservatee's best interests. Court intends to extend the conservatorship through the next hearing date, and set a brief continuance in order to permit review of the investigative report. Court is concerned that conservators may not be getting along, and that conservatee just recently received a notice to vacate. Court also queries whether limited conservatorship is warranted, and will consider reference to Regional Center.
- 3. Conservatorship of Kipper (PR10683).** No appearance is necessary. This Court, having received and reviewed the confidential investigative report, will find by clear and convincing evidence that a conservatorship remains necessary for this individual, that a general conservatorship appears to be the least restrictive option for this individual giving his pronounced deficits, and that the conservator continues to serve in the conservatee's best interests. Court to set annual review date.
- 4. Estate of Moreno (PR12151).** No appearance is necessary. Petitioner was previously ordered to submit a revised order granting the final petition, and to date has only provided an order regarding the creditor claim. Court will set another review hearing.
- 5. Estate of Bridge (PR11944).** This was to be the continued 12200 hearing but at the last hearing counsel advised that a final petition would be on file prior to this date. Counsel to advise.
- 6. Estate of Gallo (PR12259).** No appearance is necessary. This is a petition for permission to enter into an exclusive listing agreement for the sale of an estate asset. The petition identifies two parcels (048-351-020, and 048-351-004), but only seeks authority to list the former for sale. It appears to this Court that the application is MOOT since the parcel sought to be listed was already listed for sale with the MLS on 04/03/24. Although "exclusive rights to sell" are controlled by statute, and limited to 90 days with court approval (see Probate Code §10150(c)), it appears that either the listing agent does not care about exclusivity or petitioner elected to proceed without court approval. Either way, this Court is confident that the parties will honor their respective agreements, even if technically voidable. See *Estate of Ross* (1980) 101 Cal.App.3d 895, 900.

Department 5 Probate Notes for Friday, May 31, 2024

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.

7. **Estate of Belletto (PR12442).** No appearance is necessary. The petition for appointment as administrator and to admit holographic will for probate is not ready for approval. “The primary purpose of the holographic will statute is to prevent fraud by requiring that the material provisions be in the testator’s writing. Whether a document should be admitted to probate as a holographic will depends on proof of its authorship and authenticity, and whether the words establish that it was intended to be the author’s last will and testament at the time he wrote it. Courts are to use common sense in evaluating whether a document constitutes a holographic will.” *Estate of Williams* (2007) 155 Cal.App.4th 197, 206. The only evidence of authenticity is provided by decedent’s former spouse, who appears to benefit indirectly if the will is admitted and the estate passes to her son rather than decedent’s natural heirs. With no formality, witnesses or acknowledgements of heirs, the will would not easily pass muster under §§ 6110 and 6111. The clear and convincing standard under Probate Code §6110 requires a finding of high probability so clear as to leave no substantial doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. *Estate of Ben Ali* (2013) 216 Cal.App.4th 1026, 1037. Petitioner shall submit evidence from himself and at least one of decedent’s heirs establishing the handwriting, and some explanation for why decedent did not wish to leave assets to natural heirs. Court intends to continue the hearing to 06/28/24, and require supplemental papers to be filed/served on or before 06/19/24.
8. **Estate of Briscoe (PR12302).** No appearance is necessary, as a final I&A is on file.
9. **Estate of Richesin (PR12136).** This was to be the continued 12200 hearing but at the last hearing counsel advised that a final petition would be on file prior to this date. Counsel to advise.
10. **Estate of Hatler (PR12449).** No appearance is necessary. The petition for probate of subscribed will and for letters testamentary is complete and ready for approval. Court intends to sign order, issue Letters, and set §§ 8800 and 12200 review dates.
11. **Estate of Garrett (PR12432).** No appearance is necessary. The petition for administration of intestate estate is complete and ready for approval. Court intends to sign order, issue Letters, and set §§ 8800 and 12200 review dates.
12. **Estate of Nichols (PR12411).** If there is no response from counsel, the petition will be dismissed without prejudice.
13. **Estate of Jenkins-Bushart (PR12455).** The petition for probate and letters testamentary is not ready for approval. The decedent’s will identified a different individual to serve as executor, and no explanation is provided as to why that person is not so acting. In addition, the decedent left her estate to a trust, but no copy of the trust instrument is provided to permit this Court to determine who is entitled to notice. There are several other potential heirs, but none listed in para 8. Court intends to continue the hearing to 06/28/24, and require supplemental papers to be filed/served on or before 06/19/24.

Department 5 Probate Notes for Friday, May 31, 2024

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.

10:00 a.m.

14. **Conservatorship of Jardine (PR12450).** No appearance is necessary. This is a conservatorship *estate* only. This was to be the hearing on the Third Accounting. However, on 04/10/24, a family member commenced a new petition for conservatorship over the person and estate of the conservatee. See PR12450. There is Notice of Related Case filed in either case, but the relation is evident. The Court has no objection to permitting the Public Guardian to await appointment of what amounts to a successor conservator of the estate, and file a “final” accounting commensurate with the handoff. complete one comprehensive accounting if there is to be a change in the position of conservator; however, this Court is unaware of any such petition and is concerned about waiting an indefinite amount of time before this issue can be resolved. Court intends to reset this hearing for 45 days, give or take. Counsel should, nevertheless, continue working on the accounting.
15. **Conservatorship of Jardine (PR12450).** On 04/19/24, this Court granted petitioner’s emergency request for immediate appointment as conservator of her father (person only). The exigencies were based largely on the conservatee’s cognitive decline and associated personal transgressions. There was no basis to dispense with notice for purposes of succeeding as the successor conservator for the estate. The Public Guardian has now been informed of petitioner’s request to assume the estate obligations as well, and does not object. The Court is still awaiting the required investigative report in order to convert the temporary conservatorship over the person to a permanent appointment. In terms of the estate, since the Public Guardian does not object, this Court shall find by clear and convincing evidence that the conservatee remains unable to manage finances or resist undue influence, and that – barring anything revealed in the investigative report – petitioner appears to be a reliable person for said appointment. Petitioner shall be appointed temporary conservator of the estate as well. Court intends to set another hearing to confirm permanence, at which time formal and proper notice to all relatives, the Regional Center, and the Public Guardian must be clearly demonstrated by review of the court file. Counsel to submit order and letters for temporary.
16. **Conservatorship of Tolhurst (PR11138).** This was to be the hearing on the Fifth Accounting. However, there is still no accounting on file. Counsel/petitioner to advise.
17. **Matter of ASH (PR12216).** On 01/23/24, this Court authorized petitioner to withdraw funds from a blocked account in order to cover specified invoices, and ordered counsel/petitioner to submit proof of payment of said invoices right away. It has now been four months since permission to withdraw was granted, and this Court still does not have paid invoices in the file. Counsel and/or petitioner to advise.
18. **Guardianship of Phillips (PR12462).** This case is related to FL16595, JV8449 and JV8450. Petition by maternal grandfather for guardianship of two minor children (ages 15 and 12), ostensibly until bio mom gets her life back in order. Consent supplied by bio mom. Petitioner did not give notice to bio dad, claiming an inability to locate him; however Court has address for bio dad, who just recently filed papers in the related action and sought custody of these same two children as part of the recent CWS Family Safety Plan. Petitioner to confirm that the “yes” boxes

Department 5 Probate Notes for Friday, May 31, 2024

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.

on GC-212 all pertain solely to bio mom. Petitioner to confirm that bio mom no longer resides at residence per Family Safety Plan. Since minors reportedly do not have regular residence at this time, Court may be amenable to granting *temporary* guardianship pending completion of notice and the court investigation. However, there is an indication from CWS that AS was in SLO, and CS was staying at his girlfriend's home near Sonora HS. Court intends to appoint counsel for the minor children (§1470), and await the investigation before making any long-term orders.

19. **Guardianship of Spengler (PR12467).** Petition by maternal grandparents for guardianship of two minor children. Petitioners have no provided notice to either bio parent, but allege that the children currently reside with them here in Sonora. Court does not have enough information to determine basic jurisdiction over the minor children (FL-105), let alone authority to proceed without notice to the bio parents. Where are the children residing at this moment?
20. **Guardianship of Vazquez (PR12445).** Petition by maternal grandparents for guardianship of two minor children (ages 16 and 17). Petitioners neglected to answer #12 on the GC-212. There is no consent from either bio parent, and no notice provided to either bio parent. Court intends to appoint court investigator and minor's counsel (§1470).
21. **Guardianship of West (PR12380).** Temporary guardianship already established. Bio mom reportedly objects but is incarcerated awaiting resolution of various criminal charges. No contact from bio dad, and no known address (despite receiving a recent ticket here in Tuolumne County). Ward already resides with guardian out-of-county. Petitioner to address any concerns, and notice to bio mom and bio dad.
22. **Conservatorship of Garness (PR10012).** No appearance necessary. This hearing is moot in light of the Court's issuance of the final order herein.

1:30 p.m.

23. **In re Solo (PR12408).** Nonconfidential evidentiary hearing to restore firearm rights. Defendant to confirm any basis for confidentiality (W&I Code §8103(f)(5)). District attorney to confirm intention to proceed (W&I Code §8103(f)(8)).
24. **Belfield v. Buehner (FL17630).** Respondent to advise status of FL-324(P); if not, parties shall convert to FL-324(NP) as selected by Petitioner.
25. **Buehner v. Belfield (SC20482).** Small claim action involving 2006 GMC Sierra truck. This case relates to FL17631 (see Fl-180 and FL-345 Para 1.c., entered 11/07/23).
26. **In re Whitfield (FL16727).** Nonconfidential hearing to restore name.