

## Department 5 Probate Notes for Friday, June 7, 2024

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### 8:30 a.m.

1. **Conservatorship of Winn (PR11658).** 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 the current limited conservatorship appears to be the least restrictive option for this individual given his deficits, and that the Public Guardian continues to serve in the conservatee's best interests. Court to set annual review date. Parties may wish to discuss whether a general conservatorship is in the near future.
2. **Conservatorship of B. Kohler-Crowe (PR9006).** This was to be the hearing on the 12th accounting, covering the period 01/01/22 – 12/31/23. 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,” (nor does CRC 7.575 or TCSC Rule 5.17.1), the ordinary rule of thumb is four months. The accounting is tardy. Petitioner to advise.
3. **Conservatorship of Cox (PR9994).** The conservatorship has terminated by operation of law, so no annual §1850 report is required. However, the Public Guardian must still submit a final accounting. Although the biennial accounting is set for hearing on 09/13/24, the conservator should advise whether the final accounting can be set for hearing any sooner. Also, conservator needs to advise whether any probate proceeding will be commenced.
4. **Conservatorship of Johnson (PR11789).** This was to be the annual §1850 review of the conservatorship, but there is as yet no investigative report in the file to review. However, based on prior reports, it is plain 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.
5. **Conservatorship of J. Arndt-Linsley (PR11276).** 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 given his pronounced deficits, and that the conservators continue to serve in the conservatee's best interests. Court to set annual review date.
6. **Conservatorship of S. Arndt-Linsley (PR11278).** 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 given his limits (although this individual appears to qualify for an eventual step-down plan to a limited conservatorship), and that the conservators continue to serve in the conservatee's best interests. Court to set annual review date.

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7. **Conservatorship of V. Arndt-Linsley (PR11279).** 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 given her notable issues, and that the conservators continue to serve in the conservatee's best interests. Court to set annual review date.
8. **Estate of Stevenson (PR12381).** No appearance is necessary. Petition, having cured the previous probate notes, is entitled to appointment and grant of the petition. Court intends to issue Letters, sign order, and set §§ 8800/12200 review dates.
9. **Estate of Coane (PR12339).** No appearance is necessary, as petitioner has timely filed a final Inventory & Appraisal.
10. **Estate of Campbell (PR12439).** The decedent passed on 12/06/23. He is survived by two adult children (Vickie and Michael), and two grandchildren (Jeffrey and Robert). Although Vickie has appeared here in Court to object to the appointment of Jeffrey as decedent's personal representative, neither she nor Michael have sought appointment. "If persons having priority fail to claim appointment as administrator, the court may appoint any person who claims appointment." §8468. In addition, even though Robert is equal to Jeffrey, "if several persons have equal priority for appointment as administrator, the court may appoint one or more of them." §8467. Given that Jeffrey is the only person seeking appointment, and the person decedent appears most likely to have formally nominated but for his untimely passing (see Polley Decl, Tinsley Decl, Crawford Decl), Jeffrey shall be appointed to serve as administrator and will receive Letters upon his securing of a bond in the amount of \$200,000. Court intends to set §§ 8800/12200 review dates. Court will consider a reduction in the bond amount if, as Ms. Tinsley suggests, Vickie has already absconded with the personal valuables.
11. **Estate of Bellinger (PR12414).** Nothing has been filed since the last hearing. Parties were to meet and confer regarding a neutral third-party to serve as personal representative of their father's estate. Objector was to publish her competing petition. Parties were to meet and confer over the two different wills being proffered to determine whether any agreement can be reached short of a formal will contest. Parties indicated an intention to retain legal counsel before this next hearing.
12. **Estate of Jardine (PR10820).** Petitioner to explain need for new Letters when order for final distribution from eleven (11) years ago presumably includes omnibus clause.
13. **Estate of Morales (PR12288).** No appearance is necessary. This was to be the §8800 review hearing, but there is as yet no final Inventory & Appraisal on file. Although the order for probate occurred four months ago, this Court notes that petitioner did not secure a bond until 04/04/24, and as such did not secure Letters until 04/09/24. Since the deadline for filing the I&A runs from the issuance of Letters (and not the order for probate), this hearing is premature. Court intends to continue the matter two months.

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14. **Estate of Bain (PR12032).** This Court understands that the parties have resolved the related civil disputes (CV64737), and should be in a position to file the petition for final distribution. Petitioner to advise.
15. **Matter of Greener Special Needs Trust (PR11296).** This special needs proceeding is overdue for both an accounting and a substantive review. The last accounting covered the period of 03/01/18 through 02/28/22. A special needs trust is used to set aside assets to pay for the special medical needs of a severely disabled beneficiary. The purpose of a special needs trust is to enhance the beneficiary's quality of life through the purchase of additional goods and services that are not covered or adequately provided by SSI and Medicaid. To this end, assets held in a special needs trust are exempted from the list of available assets impacting Medicaid eligibility (though such assets are still considered for eventual reimbursement purposes). When a disabled individual receives money (from an inheritance or civil settlement), to avoid losing Medicaid benefits, the conservator may secure an order that the be paid directly to an irrevocable special needs trust not part of the individual's net worth. Pursuant to Probate Code §§ 3604-3605, a special needs trust may be established only if the court determines (1) that the beneficiary has a disability that substantially impairs the individual's ability to provide for the individual's own care or custody and constitutes a substantial handicap per 42 USC §1382; (2) that the person with a disability is likely to have special needs that will not be met without the trust; (3) that money to be paid to the trust does not exceed the amount that appears reasonably necessary to meet the special needs of the person with a disability; (4) at the death of the special needs trust beneficiary or on termination of the trust, the trust property is subject to government claims for reimbursement of benefits paid/received; and (5) the proposed trust instrument fully comports with CRC 7.903. See *Gonzales v. City National Bank* (2019) 36 Cal.App.5th 734, 743-744; *Herting v. State Dept. of Health Care Services* (2015) 235 Cal.App.4th 607, 612; *Conservatorship of Kane* (2006) 137 Cal.App.4th 400, 405-408. It is not clear why this individual still needs a special needs trust, with the concomitant legal fees, trustee fees, and filing requirements. The records suggest that perhaps a limited conservatorship is more in line with the needs she has, and might avoid the periodic accountings and updating. The trustee has made plain that the beneficiary does not need a conservator of the estate, as she can easily manage her own finances and household. The trustee just purchased a home for the beneficiary.
16. **Matter of Bayers (PR12356).** Hearing off-calendar in light of recent Request for Dismissal.

**9:30 a.m.**

17. **Guardianship of Robertson (PR11282).** This was to be the annual review, but there is no GC-251 on file. Pursuant to Prob. Code §1513.2(a), "to the extent resources are available, the court shall implement procedures, as described in this section, to ensure that every guardian annually completes and returns to the court a status report ... If the status report is not completed and returned as required, or if the court finds, after a status report has been completed and returned, that further information is needed, the court shall attempt to obtain the information required in the report from the guardian or other sources. If the court is unable to obtain this information within 30 days

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after the date the status report is due, the court shall either order the guardian to make himself or herself available to the investigator for purposes of investigation of the guardianship, or to show cause why the guardian should not be removed.” Guardian to advise.

18. **Guardianship of Luckett (PR11928).** No appearance is necessary. The Court, having received and reviewed the GC-251, finds by a preponderance of the evidence that a guardianship remains necessary or convenient, and that the guardians are serving the ward’s best interests. Court intends to set an early review date to correspond to the natural termination by operation of law per §1600 (unless guardians indicate an intention to petition to extend the guardianship per §1510.1).
19. **Guardianship of Kisling (PR11302).** No appearance is necessary. The Court, having received and reviewed the GC-251, finds by a preponderance of the evidence that a guardianship remains necessary or convenient, and that the guardians are serving the ward’s best interests. Court intends to set annual review date.
20. **Guardianship of N. Shrader, A. Shrader, J. Shrader (PR11901).** Where are the children currently living? This was to be the annual review of the guardianship, as well as a suggested application for a successor guardianship through the maternal grandmother, but there is no GC-251 on file. Pursuant to Prob. Code §1513.2(a), “to the extent resources are available, the court shall implement procedures, as described in this section, to ensure that every guardian annually completes and returns to the court a status report ... If the status report is not completed and returned as required, or if the court finds, after a status report has been completed and returned, that further information is needed, the court shall attempt to obtain the information required in the report from the guardian or other sources. If the court is unable to obtain this information within 30 days after the date the status report is due, the court shall either order the guardian to make himself or herself available to the investigator for purposes of investigation of the guardianship, or to show cause why the guardian should not be removed.” Guardian to advise.

### 10:00 a.m.

21. **Conservatorship of Villasenor (PR9919).** Court intends to explore options for removing one of the co-conservators to help streamline care of the conservatee, and to step-down the conservatorship to limited given the conservatee’s vast abilities. Parties to discuss.
22. **Guardianship of McGrew (PR12035).** No appearance is necessary since the guardianship terminated by operation of law.
23. **Guardianship of H. Webb and K. Webb (PR11467).** This was to be the annual review, but there is no GC-251 on file. Pursuant to Prob. Code §1513.2(a), “to the extent resources are available, the court shall implement procedures, as described in this section, to ensure that every guardian annually completes and returns to the court a status report ... If the status report is not completed and returned as required, or if the court finds, after a status report has been completed and returned, that further information is needed, the court shall attempt to obtain the information required in the

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report from the guardian or other sources. If the court is unable to obtain this information within 30 days after the date the status report is due, the court shall either order the guardian to make himself or herself available to the investigator for purposes of investigation of the guardianship, or to show cause why the guardian should not be removed.” The report is now 60 days tardy, requiring judicial intervention. Guardian to advise.

### 1:30 p.m.

24. **In re Smalling (PR12456).** This matter is set as an §8103 petition, but in fact there is no such petition in the court file. Petitioner to advise, or the matter will be dismissed.
25. **In re Barber-Townsend (CV65846).** Nonconfidential name change to remove last name; petitioner currently on probation/parole for CRF69053. There is no proof of service on the DCR, and either way legal name must remain an alias while petitioner is under the jurisdiction of the Department of Corrections and Rehabilitation. §1279.5.
26. **County of Tuolumne v. Randle (FL16502).** Because this is a deterrence-based contempt proceeding pursuant to CCP §1219 and not §1218, with no risk of physical liberty loss, real party in interest is not entitled to appointment of counsel at public expense. See *Turner v. Rogers*, 564 U.S. 431 (2011); *County of Santa Clara v. Superior Court* (1992) 2 Cal.App.4th 1686. Trial to be set on the contempt, but only on the charge of violating FL-341 provisions.

### 2:30 p.m.

27. **Estate of Parreira (PR12058).** Christopher Parreira (hereinafter “Christopher) passed away on 08/25/15 from health complications associated with sustained exposure to Roundup pesticides. In his will dtd 06/26/14, Christopher directed that “the residence located at 10434 Willow Street, Jamestown” be placed in “the Parreira Residence Trust” and utilized in the following manner:
  - Joyce’s exclusive lifetime occupation as her primary residence, provided that she covers ongoing ownership costs (aka, life estate);
  - If Joyce declines to occupy the property as her primary residence, “the residence shall be sold and the net proceeds distributed proportionately among the then living beneficiaries identified in paragraph 2” to wit: Joyce (50%); Melissa (8.33%); Zeke (8.33%); Shawn (8.33%); Emma (8.33%); Amy (8.33%); and Bruce (8.33%).
  - If Joyce utilized her life estate, after Joyce died “the residence shall be sold and the net proceeds distributed proportionately among the then living beneficiaries identified in paragraph 2” to wit: Melissa (16.66%); Zeke (16.66%); Shawn (16.66%); Emma (16.66%); Amy (16.66%); and Bruce (16.66%).

On 12/09/23, Joyce passed away. There was no notice provided to this Court of her passing.

On 03/14/24, Attorney Healy – on behalf of *both* Joyce and Debra – submitted a proposed order for final distribution. Article VI contains two distinct gifts: the first, a residence; and the second,



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“the balance of” Christopher’s estate (meaning whatever was in his estate other than the residence). The petition indicated that Joyce would be receiving \$90,393.51 from Christopher’s estate. Since neither Debra nor Attorney Healy advised this Court that Joyce was deceased, this Court reasonably surmised that the \$90,393.51 *included* the residence (see I&A filed 09/21/22 and statutory fee basis (\$406,500.69) exceeding the value of the settlement (\$371,500.69)). In other words, it appeared that Joyce was still alive, had elected not to use her life estate, and that the residence was sold with Joyce’s involvement. Joyce seemingly got 50% of the residence as one of Christopher’s “then living beneficiaries,” and the other six each received 8.33%. In fact, all six of the residual beneficiaries signed receipts for \$15,065.58, indicating they each received their 8.33%. No receipt from Joyce was ever filed, suggesting that Attorney Healy is still holding onto Joyce’s \$90,393.51. There is no question that Joyce is entitled to 50% of “the balance of” Christopher’s estate because she did survive him by 30 days; but her entitlement to the residence depends on whether she waived or used/exhausted her life estate. Neither side has explained whether Joyce lived in the residence until her passing. See Probate Code §11642 and doctrine of nunc pro tunc.