

## Department 5 Probate Notes for Friday, June 28, 2024

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### 8:30 a.m.

1. **Conservatorship of Valdez (PR10308).** Court is still awaiting declaration from counsel regarding estate's insolvency and termination of conservatorship by operation of law.
2. **Estate of Knowland (PR12238).** This is a petition to account, distribute and eventually close decedent's estate. Although decedent was married at the time of her passing, her new husband (Victor) is presumptively disqualified from inheritance, having been convicted by a Mexican court of something akin to the "felonious killing" of decedent (he shot her in a head after an argument involving his alleged infidelity). See Probate Code §250, and *Childs v. Stanford*, WL12875370 (S.D. Cal. 2012). Victor has since filed a disclaimer. Decedent's only asset here in Tuolumne County is a 50% interest in real property, which she acquired as part of an earlier, and never-resolved, dissolution action (see FL7321). Petitioner advises (see Para 4) that there is a stipulated judgment filed in FL7321, but a review of that file fails to reveal any such stipulation. No copy of that stipulation is attached to the petition. In addition, this Court is unclear as to the basis used for the statutory fee, as the I&A filed 11/13/23 appears to appraise the whole of the property and not just decedent's 50% interest. Counsel to clarify both issues.
3. **Estate of Welsh (PR12217).** No appearance is necessary. This Court, having carefully reviewed the original and supplemental information pertaining to the request for extraordinary fees, finds that an additional fee of \$5,000.00 is warranted. Counsel to prepare and submit revised order thereon.
4. **Estate of Hopper (PR12187).** No appearance is necessary. This is a petition to account, distribute and eventually close decedent's estate. The petition is complete, accurate, and approved in all respects. Counsel to submit proposed order thereon.
5. **Estate of Schrank (PR12350).** No appearance is necessary. While this was to be the scheduled §8800 review hearing, a review of the court file reveals that – due to a delay in the issuance of the Letters – petitioner still has some of her "four months" left to have assets inventoried and appraised. Court intends to continue the hearing 60 days.
6. **Estate of Gonzales (PR12273).** No appearance is necessary. While this was to be the scheduled §12200 review hearing, a review of the court file reveals that – due to a delay in the submission of Letters – petitioner still has considerable time remaining. Court intends to continue this review hearing at least 120 days.
7. **Estate of Vieira (PR12323).** Pursuant to §8800, petitioner is required to file a final I&A within four months after receiving Letters. In this instance, Letters were issued 02/02/2024, putting petitioner just outside that window. There is no I&A yet on file. Petitioner/counsel to advise.

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8. **Estate of Bratcher (PR12436).** No appearance is necessary. The petition for probate and letters testamentary is proper in all respects, save for the absence of proof of publication – which is a condition precedent to the issuance of Letters. Petitioner to advise.
9. **Estate of Schmidig (PR12117).** At the prior hearing, petitioner was reminded of her obligation to timely file a petition to account, distribute and eventually close decedent’s estate. She advised it would be done forthwith. Petitioner is invited to review Probate Code §§ 12204-12205 and make this matter a priority.
10. **Estate of Blair (PR12249).** No appearance is necessary. Although counsel’s supplemental filing omitted the F&G Distribution paperwork as requested by this Court, the explanation provided by counsel is sufficient to satisfy this Court’s concern and to resolve the previous note. Counsel to provide proposed order thereon.
11. **Estate of Vasquez (PR12468).** At first blush, there is nothing amiss about the petition; however, the fact that decedent did not provide for biological kin in the copy of the will submitted bolsters the §6124 presumption. Counsel to clarify that petitioner has direct personal knowledge of the facts set forth in Attachment 3f(3). See Evid. Code §702; *Forest Lawn Memorial-Park Ass’n v. Superior Court* (2021) 70 Cal.App.5th 1, 8-12. Alternatively, any writing from all three disinherited kin acknowledging the authenticity of the copy of the will proffered would suffice.
12. **Estate of Carrigan (PR12367).** No appearance is necessary, as a final I&A has been filed.
13. **In re Hardin Trust (PR12351).** Before the Court this day is a “motion to quash” (though more accurately a motion for a protective order relating to) business record subpoenas directed to Bank of America (checking account xx2137) and Bank of Stockton (checking account xx1066) on privacy grounds, noting that neither account is an asset of the trust. While the premise underlying the opposition thereto is that Rowena waived her right to privacy by (1) commingling trust and non-trust assets therein and (2) depositing payments made by the trust to the account without proper accounting, there is a more-encompassing concern here and that is whether the objector is required to accept at face value the trustees’ representation that these are indeed true multi-party accounts and not trust assets in disguise. The challenge stems from the various statutes and cases contouring what qualifies as a true multi-party account. See, e.g., Probate Code §§ 5201, 5302(a), 5303; *Royals v. Lu* (2022) 81 Cal.App.5th 328, 353; *Dunlap v. Mayer* (2021) 63 Cal.App.5th 419, 425-426; *Placentia v. Strazicich* (2019) 42 Cal.App.5th 730, 739-742; *Estate of O’Connor* (2017) 16 Cal.App.5th 159, 166-167; *Araiza v. Younkin* (2010) 188 Cal.App.4th 1120, 1125-1126; *Lee v. Yang* (2003) 111 Cal.App.4th 481, 491-493. Objector has a presumptive right to inquire about any matter which – based on reason, logic, and common sense – might (1) be admissible, (2) lead to admissible evidence, or (3) reasonably assist that party in evaluating the case, preparing for trial and/or facilitating resolution. See *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557. Although the scope of discovery from third parties is less deferential than discovery directed at an adverse party, the threshold for discovery from non-parties can often be met with particularized facts justifying the discovery sought. See *Board of Registered Nursing v. Superior Court* (2021) 59

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Cal.App.5th 1011, 1030-1039. In this instance, while trustee may have a privacy interest in an account actually and truly belonging solely to her (see *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 656; *In re Marriage of Tamir* (2021) 72 Cal.App.5th 1068, 1087), that right is never absolute. The factors a court must consider include “the purpose of the information sought, the effect that disclosure will have on the parties and on the trial, the nature of the objections urged by the party resisting disclosure, and ability of the court to make an alternative order which may grant partial disclosure, disclosure in another form, or disclosure only in the event that the party seeking the information undertakes certain specified burdens which appear just under the circumstances.” *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 712. This Court is inclined to deny the motion to quash and require instead a protective order covering the information disclosed, but will hear from the parties.

14. **Matter of Paine (PR12421).** No appearance is necessary, as the supplemental filings have resolved the Court’s previous concern regarding the chain of title. Petitioner to submit proposed order for entry thereon.
15. **In re Patton Family Trust (PR12460).** Trust dispute involving real property in Ventura County. Transfer-in review hearing and trial setting, if warranted.

### 10:00 a.m.

16. **Conservatorship of Kohler-Crowe (PR9006).** This Court is still awaiting submission of the 12<sup>th</sup> accounting. Conservator to advise.
17. **Conservatorship of Gillette (PR11986).** No appearance is necessary. The Court, having received and reviewed the 2<sup>nd</sup> Accounting, intends to approve the accounting in full and enter the proposed order thereon. Court to set biennial accounting review date
18. **Conservatorship of Elekes (PR11746).** No appearance is necessary. The Court, having received and reviewed the 2<sup>nd</sup> Accounting, intends to approve the accounting in full and enter the proposed order thereon. Court to set biennial accounting review date.
19. **Conservatorship of Smith (PR10905).** This Court is still awaiting submission of the 6<sup>th</sup> accounting. Counsel to advise.
20. **Guardianship of Garcia (PR11487).** This is a guardianship case which has fallen through the proverbial cracks after a 2021 order removing one of the two co-guardians. There is no GC-251 on file, but this matter needs to get back on the wheel.
21. **Guardianship of Barnes (PR12324).** Interim review hearing, specially-set. Court intends to set the annual review to align with original appointment.

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22. **Guardianship of Alexander (PR12459).** Pursuant to Family Code §3041, before making an order granting custody to a person other than a parent, over the objection of a parent, the court shall make a finding by clear and convincing evidence that granting custody to a parent would be detrimental to the child and that granting custody to the nonparent is required to serve the best interest of the child. The proposed guardians have not yet submitted sufficient evidence of detriment, unfitness or best interests, although this Court is aware of the fact that both biological parents are facing current criminal charges. See CRM72969, CRM72269, CRM74538, CRM74626, and CRM74537. Court investigator to advise whether she was able to make contact with the parents at their arraignments.
23. **Guardianship of Chen (PR12453).** Application for special immigrant juvenile status. Petitioner's request for a Chinese interpreter has been a challenge for this Court, in such a remote setting, to secure. If no official interpreter is available, Court will consider favorably any request per Govt. Code §68561(c) and CRC 2.893(d) for interpretative services provided by the applicant or someone available to the applicant to assist. Court investigator was appointed, but the report is not yet ready for review, and may necessitate a continuance of the hearing.

### 11:00 a.m.

24. **Guardianship of Guida (PR12448).** Hearing to determine whether the existing temporary guardianship should be converted to a permanent guardianship or terminated altogether. Interview with proposed ward in chambers.

### 1:30 p.m.

25. **In re Calabrese (PR12430).** Nonconfidential hearing re relief from firearm restriction per §8103(g). Applicant is deemed the petitioner, not the D.A. Applicant to advise whether hearing shall be closed. "If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms." However, "it shall be unlawful for any person who has been committed to a mental institution to possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." 18 USC §922(g)(4).
26. **Petition of Barber-Townsend (CV65846).** Court is awaiting proof of service on the DCR per §1279.5.