

Department 5 Probate Notes for Friday, August 2, 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. Estate of Nute (PR12482).** This is an intestate spousal petition involving APN 032-312-001. Decedent acquired his interest in said parcel in 1998 via grant deed, but did not marry petitioner until 2020 (twenty-two (22) years later. Absent evidence of a written marital transmutation consistent with Family Code §852, the parcel was decedent's separate property when he passed. See Family Code §770. Pursuant to Probate Code §6401(c), petitioner is reportedly entitled to one-half of the property, and the balance to decedent's child (which appears to be Kasey Brady). Petitioner may wish to explore options for a disclaimer (to remain in this summary proceeding per §13501), or may request an evidentiary hearing to establish petitioner's SP contribution per Family Code §2640 via an ordinary probate (see §13653). Petitioner to give notice.
- 2. Estate of Gallo (PR12259).** Pursuant to probate code §12200 et seq, the personal representative of an estate is expected to either wrap up the proceeding, or explain the need for more time, within 12 months after the issuance of Letters. Letters here were issued 07/21/24, and there is at present no petition for final distribution on file, nor is there a status report. Counsel to advise.
- 3. Estate of Schmidig (PR12117).** The final petition for distribution is not ready for approval. Although Petitioner has done an admirable job trying to navigate this process without the assistance of counsel, bare minimums are required. The petition fails to include any explanation for the whereabouts of the Wells Fargo account, the Louisiana Pacific dividends, the residence, the 1997 Chevy truck, the 2006 Honda Accord, the CIC Defined Retirement Plan and the Vanguard Plans (if these are assets of the estate). See Probate Code §11641. The petition also states that petitioner is the sole heir, but that appears to be incorrect. Petitioner to advise.
- 4. Estate of Correa (PR12097).** This is an unopposed petition for order requiring liquidation of assets and an increase of the bond. On 10/17/22, decedent's daughter Theresa was issued Letters with IAEA authority on a \$400,000 bond. She inventoried decedent's real property, which appraised at \$350,000, but reportedly agreed to permit decedent's other daughter Sharon to exclusively occupy the residence and cover the carrying costs. Objection is made by one, if not, two, of the heirs insisting that the property must be sold and the estate distributed. This Court agrees, and has indicated such in prior hearings. Court intends to order that a petition for final distribution be filed/served within 30 days. Court also intends to order an increase in the bond to \$500,000. Court does not see any need/basis for formal eviction proceedings as Sharon's distributive share will be surcharged for any impedance with the distribution plan. Court does not see any need/basis for reappraisal of the asset by the probate referee at this juncture, as the parties are free to secure their own appraisals/estimates. Court reserves all level of sanction associated with delays and losses, if any.
- 5. Estate of Reeves (PR12248).** The final petition for distribution is not ready for approval. Although Petitioner has done an admirable job trying to navigate this process without the assistance of counsel, bare minimums are required. The disconnect between the various APNs was to have been cured with a preliminary title report or litigation guarantee, not a declaration from petitioner

Department 5 Probate Notes for Friday, August 2, 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.

describing hearsay statements from County employees. Moreover, there are no copies of deeds actually attached to the documents (despite the reference to exhibits attached).

6. **Estate of Trevethan (PR12491).** This is an intestate spousal petition involving APN 046-165-019. It is petitioner's obligation, per §13651, to provide all of the information needed to the Court to make the requested determination. The petition makes reference to, but fails to include, a copy of the deed for the subject property, or an up-to-date preliminary title report showing how the property is currently held. There is an indication that the property is held in the name of decedent alone, as his separate property, which triggers an inquiry under Family Code §770 and Probate Code §6401. Petitioner to advise.
7. **Estate of Nicholls (PR12016).** No appearance is necessary. The Court, having received and reviewed counsel's 12200 status report, finds by a preponderance of the evidence that good cause exists for an extension of the administration. Court intends to set a review hearing to occur in 120 days.

10:00 a.m.

8. **Conservatorship of Stevenson (PR11972).** Court is still awaiting word on the §§ 2630-2631 final accounting.
9. **Conservatorship of Kohler (PR9777).** Counsel for the conservatee was to have filed a formal motion to terminate the conservatorship; instead, this Court received a motion from counsel to withdraw from the case. That motion, set for hearing 09/13/24, does not provide any factual basis for the request, and no mention of the obligation to run a motion to terminate. Court has received report from Casa De Stella Residential Home, but report does not specify that the conservatee is welcome to reside there indefinitely. Court is still awaiting the report from VMRC.
10. **Conservatorship of Hempler (PR11622).** Court is still awaiting word on the §§ 2630-2631 final accounting.
11. **Guardianship of Spengler (PR12467).** Court previously awarded temporary guardianship over Carter (14) only, as he was already residing with the proposed guardians. Caleb (11) reportedly lives with bio mother and step-father elsewhere. Petitioners have still not filed proof of service on either bio parent. Venue remains unclear. Petitioners filed update regarding Caleb, including reference to a CWS report in Humboldt County. According to Petitioners, bio mother is noncompliant. Notice to bio dad still lacking. Need §3041 findings.
12. **Guardianship of Vazquez (PR12445).** Petition for permanent guardianship of two teens by maternal grandparents. No notice to bio dad. Mother taking two younger children to north Carolina, and agrees to guardianship.

Department 5 Probate Notes for Friday, August 2, 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.

13. **Guardianship of Alexander (PR12459).** Awaiting supplemental report from court investigator regarding bio parents' fitness to provide the proposed ward (§3041)
14. **Guardianship of the Shrader boys (PR11901).** Awaiting supplemental report from court investigator regarding successor guardian.
15. **Conservatorship of Love (PR12105).** No appearance is necessary. The Court, having received and reviewed the investigative report, intends to find by clear and convincing evidence that a conservatorship of the person remains necessary, that a general conservatorship is the least restrictive option, and that the conservators are serving the conservatee's best interests. Court intends to set annual review date.

1:30 p.m.

16. **Petition of Cravey (CV66188).** Nonconfidential petition to change first and last name. No proof of publication. No stated basis (Para 7).
17. **In re Hardin Trust (PR12351).** Settlement Conference. Vacated.