

## Department 5 Probate Notes for Friday, October 11, 2024

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### 8:30 a.m.

- 1. Conservatorship of Villasenor (PR9919).** No appearance is necessary. This is a §2651 Petition for Removal of the Conservator of the Estate, filed by the conservator of the person. According to petitioner, the conservator of the estate is not paying the bills on time, and is not handling the money properly. See §2650(a), (c) and (j). However, since the conservator of the person resides in the same mobilehome as the conservatee, the conservator of the estate is hesitant to pay “all bills” since some appear not to be for the benefit of the conservatee. Petitioner previously sought, and secured, appointment as co-conservator of the estate based on co-conservator’s recent surgery and temporary incapacity. Since an accounting is due 11/08/24, both co-conservators must work together to complete that – after which the question of whether one should step down will be addressed by the Court.
- 2. Estate of Madrid (PR12308).** No appearance is necessary. The Court, having received and reviewed the status report, finds by a preponderance of the evidence that good cause exists to extend administration of the estate for an additional four (4) months. Court intends to set another §12200 review hearing.
- 3. Estate of Phipps (PR12493).** No appearance is necessary. This is a petition for letters of administration. All of the procedural and substantive requirements for appointment appear to have been satisfied. Although petitioner is a person entitled to priority under §8461(b), when there are others with equal authority (§8467), this Court generally prefers to see nominations (§8465) to avoid disagreements down the road. For present purposes, this Court will accept the bond waivers (§8481(a)(2)) as tacit nominations to serve. Court intends to grant petition and set review dates.
- 4. Estate of Fountain (PR12509).** Petitioner seeks an order admitting her father’s will to probate, and for the issuance of letters annex. As for the will, §6100(a) provides that only those “of sound mind” may make a will, which includes both the competence to understand the making of a testamentary gift and the free will to so consistent with the writing. See §§ 6100.5 and 6104. Ordinarily, evidence of the testator’s sound mind is proffered by the testator, not the witnesses (see §6110(c)), but for present purposes this shall suffice. Regarding the request to serve as personal administrator, this Court notes while the proposed executors nominated in the will declined to serve, the will does not authorize them to select an administrator (§8422(c)). Priority first goes to anyone taking the largest share of the estate (§8441(b)), which could either be one of the beneficiaries under the family trust or the next of kin of decedent’s surviving spouse (see PR11509). This Court does not know who has the largest stake in the estate, so additional nominations and a flow chart will be required to complete the petition.
- 5. Estate of Brejla (PR12366).** No appearance is necessary. This is a petition for final distribution and for allowance of statutory fees. The Court, having received and reviewed the petition and distribution plan, finds that the petition meets all the procedural and substantive requirements and is entitled to be granted. Court intends to enter proposed order thereon.

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6. **Estate of Thomas (PR12469).** Hearing carried over from 08/23/24. This is a petition to open a decedent's estate. Unfortunately, the petition is not ready to be approved, as there are quite a few anomalies requiring cure. The petition indicates a request to probate a will, but then notes that the decedent died intestate. Petitioner must confirm. There is no request for IAEA authority, which petitioner would presumably like to have. There are no bond waivers attached, despite the reference. There are no other heirs listed in Para 8, but notice was provided to someone with the same surname as decedent. Petitioner resides out of state and did not include a permanent resident attestation required of out-of-state personal representatives. Para 3 does not appear to be filled out correctly. There is, also, no proof of publication.
7. **Estate of Ahlswede (PR12282).** No appearance is necessary. This was to be the annual §12200 review hearing, but a petition for final distribution is already on calendar.
8. **Estate of Correa (PR12097).** Hearing carried over from 08/02/24. 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 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 reserves all level of sanction associated with delays and losses, if any. Objector to confirm whether petition remains active despite withdrawal of counsel.
9. **Estate of Richesin (PR12136).** This is a petition for final distribution and for allowance of statutory fees. Notice of the hearing hereon must be provided to Benny, Craig and Ronald (see §§ 9611 and 11701), but there is no proof of service in the court file. It appears to this Court that petitioner seeks an order sanitizing funds already used to reimburse himself for costs incurred during the administration of the estate, which is improper (see §10501). If, instead, the \$14,350.87 remains in the estate account, this Court will require additional information regarding the \$5,354.00 to USA Containers. There is also a question of the mortgage, to wit: since there are only 5 mortgage payments listed, have the heirs collectively paid off the mortgage as the accounting suggests? If not, how is the mortgage going to be refinanced out of the decedent's name and into the names of the heirs? What came of the personal property valued at \$3,500? Finally, the petition states that there are no creditor claims, but the court file contains two creditor claims that appear to have never been addressed by petitioner. Counsel to explain.
10. **Estate of Easton (PR12270).** This is a petition for final distribution and for allowance of statutory fees. Notice of the hearing hereon must be provided to all persons entitled thereto (see §11701), but it is challenging to determine who qualifies for direct notice. The Last Will & Testament states that

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all assets will be bequeathed to petitioner, but then incorporates typed letters that appear to direct certain assets to others. For example, Sheri and Helga were supposed to receive some items so long as they outlived decedent. In addition, although Sandra is not presently alive, she was supposed to have a vote in where other items went, including in theory to herself. Did she survive decedent? What about Darcy, Dixie and Rebecka? The petition indicates that everything is going to petitioner, so is that to mean that all of the named persons pre-deceased decedent, or that the specific bequests were lost by decedent? Some further explanation is required.

11. **Estate of Rodgers (PR12291).** No appearance is necessary. This was to be the annual §12200 review hearing, but a petition for final distribution is already on calendar.
12. **Estate of Patterson (PR12494).** Hearing carried over from 09/06/24. Before the Court this day remains the petition to determine succession to a small estate. The petition is unclear if the estate consists of the promissory note dated 01/05/11, or the deed of trust dated 04/11/11. Either way, it does appear to this Court that petitioner is really seeking a “Heggstad” petition to move one of both of those assets into decedent’s trust. Succession does not appear to be the “right” vehicle since that would require distribution on a pro rata basis to each of decedent’s heirs in accordance with Probate Code §6402, not to one individual serving as trustee. In addition, if there is to be a transfer of anything other than the promissory note itself, the Court will expect to see notice to the trustors, as well as contemporaneous proof of record ownership of the subject property and payments made on the note. Counsel agrees that Heggstad might be the proper way to go, but nothing new has been filed since the last hearing.
13. **In re Wick Revocable Trust (PR12418).** Review hearing regarding completed settlement agreement. Counsel to advise if petition ready to be dismissed.
14. **Estate of Cascio (PR12396).** Court still awaiting verified §12251 petition.

Add-on:

**Estate of Kincaid (PR12205).** Ex parte application to shorten notice on a petition to fill a purported vacancy in the office of personal representative. The Court notes that the petition does not include any evidence from which to conclude that the current personal representative has *already* resigned, only that he desires to do so. Thus, no urgency is shown for the ex parte application. Nevertheless, since the petition appears to otherwise be in proper form, Court will consider granting at hearing.

**10:00 a.m.**

15. **Conservatorship of Zimmer (PR12145).** The Court, having received and reviewed the investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory qualifications for a general conservatorship, that a general conservatorship remains the least restrictive alternative for the conservatee’s protection, and that that the conservator is serving

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the conservatee's best interests. Although Court intends to set annual review date, Court is aware that conservator and conservatee's counsel appear to agree that conservatee needs the additional care that only an LPS Conservatorship can provide. Conservator to advise whether this route will be explored, and if so when. Conservatee's counsel to remain pending possible LPS petition. Citation appears to have been sufficiently served upon conservatee.

16. **Conservatorship of Dorrell (PR10734).** No appearance is necessary. The Court, having received and reviewed the investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory qualifications for a general conservatorship, that a general conservatorship remains the least restrictive alternative for the conservatee's protection, and that that the conservator is serving the conservatee's best interests. Court to set annual review date.
17. **Conservatorship of Rutkin (PR10943).** No appearance is necessary. The Court, having received and reviewed the 4<sup>th</sup> and Final accounting, concludes by a preponderance of the evidence that the accounting faithfully summarizes all relevant transactions regarding the conservatee's estate, all such transactions are for the conservatee's benefit and in the conservatee's best interests, and the amount sought for compensation of professional/fiduciary services rendered is shown to be reasonably necessary for the conservatee. The accounting will be approved.
18. **Conservatorship of Kolpack (PR10694).** No appearance is necessary. The Court, having received and reviewed the investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory qualifications for a general conservatorship, that a general conservatorship remains the least restrictive alternative for the conservatee's protection, and that that the conservators are serving the conservatee's best interests. Query: is there a similar location closer so conservatee can see conservators, and so conservatee can feel more in a peer setting? Court intends to set annual review date.
19. **Conservatorship of Gillette (PR11986).** No appearance is necessary. The Court, having received and reviewed the investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory qualifications for a general conservatorship, that a general conservatorship remains the least restrictive alternative for the conservatee's protection, and that that the conservator is serving the conservatee's best interests. Court intends to set annual review date.
20. **Guardianship of Tuchsén (PR10954).** Still awaiting GC-251. Guardians failed to appear at last hearing. Court intends to release court investigator into the wild to find guardians at their expense (see §§ 1513.1, 2102, 2015.5).
21. **Guardianship of Bustamante (PR11337).** Still awaiting GC-251. Guardians failed to appear at last hearing. Court intends to release court investigator into the wild to find guardians at their expense (see §§ 1513.1, 2102, 2015.5).
22. **Guardianship of Mutchler (PR12159).** No GC-251 on file yet.

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23. **Guardianship of Hernandez (PR10832).** This is a review hearing following the in-chambers conference with the minor ward. The conference was originally contemplated as part of Mother's petition to terminate the guardianship, but that petition has since been voluntarily withdrawn. Court intends to address in-chambers conference with parties and to assist the parties in reaching an agreement regarding visits with bio mom. Court to address bedroom allocation with guardians and whether a change is needed.
24. **Guardianship of Hernandez (PR11350).** This is a review hearing following the in-chambers conference with the minor ward. The conference was originally contemplated as part of Mother's petition to terminate the guardianship, but that petition has since been voluntarily withdrawn. Court intends to address in-chambers conference with parties and to assist the parties in reaching an agreement regarding visits with bio mom. Court to address bedroom allocation with guardians and whether a change is needed.
25. **Guardianship of Castillo (PR11445).** Still awaiting GC-251. Guardians failed to appear at last hearing. Court intends to release court investigator into the wild to find guardians at their expense (see §§ 1513.1, 2102, 2015.5).
26. **Guardianship of Cox (PR12392).** No appearance is necessary. The Court, having received and reviewed the ex parte application to release funds (§3411) from the blocked account to cover tuition and book costs for attending MLCS, intends to find by a preponderance of the evidence that the fund request is in the ward's best interests. See §§ 2351(a), 2359, 2420, 2430, 2456. Guardian will be required to submit paid invoices to the Court as soon as they are received.

**1:30 p.m.**

27. **Freed v. Haskayne (CV66262).** Former lovers. TRO granted. Court trial on EARO. WL/EL received from Petitioner; nothing received from Respondent. Respondent already exercised continuance right. Parties expected to answer ready.
28. **OLIT 2023 HBI Alternative Holdings LLC v. Martin (CVL66348).** This is a residential UD action commenced by way of verified complaint on 08/15/24. Before the Court this day is defendant's presently-unopposed motion to quash. Defendant's request to have his legal papers interpreted with flexibility commensurate with the status of unlearned pro per filings is granted. See Civil Code §3528. However, said flexibility does not obviate defendant's obligation to state a cogent legal basis for the requested relief.

Here, defendant moves to quash the summons served upon him because he believes the summons is defective for want of an original affixed seal. See Para 5 and 7. To be valid, a summons must be signed by the clerk and affixed with the court seal. See CCP §§ 153(b), 412.20, 1167. The seal shall be circular, inscribed with the name of the county, be not less than 1¼-inch in diameter, and be affixed in a legible fashion. See Govt. Code §§ 68074 – 68076. The manner of affixing is left



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somewhat to the discretion of the court, so long the seal “will reproduce legibly under photographic methods.” See Govt Code §68074.1. A review of the court file reveals that the summons issued in this comports with the aforementioned statutory requirements.

Defendant was personally served with a photocopy of the summons. He contends this is not authorized because service must include the original court seal. A copy of the summons may be used to effect service on the defendant, so long as the copy is legible. CCP §415.10; *Courtney v. Abex Corp.* (1986) 176 Cal.App.3d 343, 346; in accord, *Pelayo v. J.J. lee Management Co., Inc.* (2009) 174 Cal.App.4th 484, 500. The copy here is legible. Even if it were not, substantial compliance is sufficient where (1) the record shows partial or colorable compliance with the requirement on which the objection is predicated; (2) the service relied upon by the plaintiff imparted actual notice to the defendant that the suit was pending and that he was bound to defend; and (3) the manner and objective circumstances of service were such as to make it highly likely that it would impart such notice. *American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 391; *Carol Gilbert, Inc. v. Haller* (2009) 179 Cal.App.4th 852, 855; *Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 407-413; *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1183; *Pinkerton’s Inc. v. Superior Court* (1996) 49 Cal.App.4th 1342, 1349.

Motion to quash is DENIED. Defendant to answer in 5 days. Parties to agree upon court trial date.

29. **Orth v. Agren (CV66281).** Former housemates. TRO granted. Court trial on CHRO. Neither side has submitted WL/EL/TB, despite court order. Respondent already exercised continuance right. Parties expected to answer ready or matter will be dismissed.