

## Department 5 Probate Notes for Friday, November 1, 2024

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### 8:30 a.m.

- 1. Estate of Stevenson (PR12381).** No appearance is necessary. This probate action was released into the wild on 06/25/2024. Pursuant to Probate Code §8800, petitioner had four months to prepare and file a final Inventory & Appraisal. Although the filing is technically tardy, this Court notes some delay in getting signed Letters issued. As such, Court intends to continue this hearing 30-45 days.
- 2. Estate of Conlin (PR12480).** No appearance is necessary. This is a petition for special administrative letters to conclude administration of the estate after the acting administrator passed away. Although the petition does not specify what “special” tasks are needed, the supplemental papers filed after the last hearing satisfy this Court that there is no need for a fully-noticed petition to appoint a successor personal representative (§8522) and that the ordinary statutory special administrative powers (§8544) will be sufficient to close the administration. See Probate Code §8540, Law Rev. Comm'n Comment; in accord, see *Smith v. Shewry* (2009) 173 Cal.App.4th 1163, 1169. Although petitioner’s request for general powers (§8545), including the power to negotiate creditor claims (see *Estate of Buchman* (1955) 132 Cal.App.2d 81, 105), ordinarily requires publication, there has already been publication and Letters issued so republication is not required. See §8545(a).
- 3. Estate of Campbell (PR12439).** No appearance is necessary. This probate action was released into the wild on 07/01/2024. Pursuant to Probate Code §8800, petitioner had four months to prepare and file a final Inventory & Appraisal. Although the time to do so has not yet expired, this Court notes some delay in getting the bond and signed Letters issued. A partial I&A is already on file. As such, Court intends to continue this hearing 30-45 days.
- 4. Estate of Hayes (PR11917).** This is a petition for final distribution and allowance of fees for an action which was released into the wild more than three years ago. During the pendency of this administration, there was related litigation between the personal representative (decedent’s son) and Russell (decedent’s boyfriend) over a putative life estate in the primary estate asset. The UD action (CVL64222) was consolidated with the civil action (CV64343) and effectively stayed. The civil action (CV64343) remains active, the last event being a notice that Russell moved out (see Minute Order dtd 03/29/24). Assuming that the UD action is now moot, that action should be dismissed. Assuming that the civil action has been settled, that too such be dismissed. Until such time as those actions are finally closed, the petition herein must wait in limbo. In the interim, petitioner must clarify (1) how title to the real property will be held (joint tenancy vs. tenants in common), (2) how petitioner intends to satisfy the sizable legal fees proposed herein (§10831), and (3) how petitioner intends to satisfy the \$35,000 payable to Russell. Court intends to continue the hearing 45-60 days.

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5. **Estate of Chapin (PR12286).** This is a petition for final distribution and allowance of fees. The petition is not ready for approval, based on the following concerns. First, since it appears to this Court that Jerry survived decedent by 120 hours (§6403), he is entitled to 50% of the estate. There is no mention in the petition about Jerry's estate plan, nor is there any small estate affidavit filed by his heirs. There is an entire step missing in asking for his share to be split between Robin and John (assuming those are Jerry's kin). Second, there is a mistake in the math related to statutory fees as there was no gain on the sale of the real property. The seller credit to the buyer erases the gain on sale. Court intends to continue the matter 30-45 days.
6. **Estate of Gallo (PR12259).** This probate action was released into the wild on 07/21/2023. Pursuant to Probate Code §12200, petitioner had 12 months to file either a petition for distribution or a status report explaining the need for additional time to complete the administration. A status report was received on 08/02/2024, informing this Court that petitioner was still trying to sell the real property. On 09/30/2024, Petitioner filed an *ex parte* application seeking general administrative authority on the representation that having said additional authority will expedite sale of the residence. The request was granted. Petitioner now advises that she has a "medical condition" requiring her to remain in the residence, and to add additional family members. Unless this turn of events pleases the beneficiaries, Court intends to order the filing of a petition for final distribution. Petitioner to immediately file a TUO-PR-125.
7. **Estate of Kincaid (PR12205).** This probate action was released into the wild on 09/09/2022. Pursuant to Probate Code §12200, petitioner had 12 months to file either a petition for distribution or a status report explaining the need for additional time to complete the administration. Although no status report was received, this Court is aware that delays occurred relating to the recent petition to substitute in a new personal representative following a vacancy in the office. Court intends to set deadline for the filing of a petition for final distribution.
8. **Estate of Garrett (PR12432).** No appearance is necessary, as a final I&A (§8800) is already on file.
9. **Estate of Jenkins-Bushart (PR12455).** No appearance is necessary. This probate action was released into the wild on 05/31/2024. Pursuant to Probate Code §8800, petitioner had four months to prepare and file a final Inventory & Appraisal. Although the time to do so has already expired, this Court notes that this self-represented petitioner may need some additional time to have this completed. Court intends to continue this hearing 30-45 days.

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10. **In re Patton Family Trust (PR12477).** This is related to #14. This is a special proceeding to address alleged concerns regarding the existence and scope of competing trust instruments, pitting members of a blended family at odds with one another. At the prior hearing, the parties advised that they intended to participate in a *Breslin* mediation with the hopes of resolving all claims at once. Although it appears that the date set for said mediation came and went, there is no information provided to this Court as to the status of said mediation. Assuming no resolution was reached, the parties must be prepared at this hearing to address options for resolution. Parties to advise whether this matter can be resolved using the summary dispute resolution procedures (§§ 1022, 1046, 9620) with ordinary briefing (CCP §§ 437c, 1010, 1005(b), 1005.5, and CRC 3.1306). See *Dunlap v. Mayer* (2021) 63 Cal.App.5th 419, 426. If not, parties to select trial date(s), and to advise whether either party is of the opinion that Cal. Const. Art. 1 §16 provides any right to a jury regarding any factual dispute involving a question of law herein. See, e.g., §§ 825, 17006.
11. **In re McKenry Living Trust (PR12518).** This is a petition to declare an untethered asset one belonging to a trust. A trial court may make a transfer under §856 of property into a trust if the settlor(s) presently own(s) the subject property, the settlor(s) created a trust with themselves as trustor, and there exists sufficient evidence from which to conclude that the settlor(s) intended said property to be held in that trust. See *Carne v. Worthington* (2016) 246 Cal.App.4th 548, 558-560; *Ukkestad v. RBS Asset Finance, Inc.* (2015) 235 Cal.App.4th 156, 160-161; *Estate of Powell* (2000) 83 Cal.App.4th 1434, 1443; *Estate of Heggstad* (1993) 16 Cal.App.4th 943, 950-951. Here, petitioner contends that a portion of a deed of trust associated with APN 094-260-006 should rightfully be held in the name of the trust because (1) the real property to which it is attached has been an asset of the trust since 2019, (2) the decedent-settlor intended that his trust should hold title to all of his “real and personal property of whatever kind” (see Schedule A), and (3) sending the deed through probate leads to the same outcome since decedent’s will directs that all of his assets pour into the trust. Although decedent’s share of the deed of trust arguably has no value separate from the 02/01/2005 promissory note (the present amount owing is unclear), the legal basis for the redirection of decedent’s share of the deed from decedent personally to the trust is warranted. However, this Court makes no finding as to what portion of the deed belongs to decedent, what amount remains owing on the Note, or whether Judith should be entitled to “an equal share” of the note/deed (Section 6.03) or the proposed 1/3 share (Section 7.01), and this petition does not seek such findings. Court intends to grant the order but will require additional information if the proposed order calls for the above-referenced findings.
12. **In re Rubinstein Trust (PR12516).** This is a petition to remove the current acting successor trustee for alleged transgressions in the administration thereof. Pursuant to §15642, a trustee may be removed in accordance with the trust instrument or by court order upon proof by a preponderance of the evidence (Evid. Code §115) that the trustee is

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failing/unfit to administer, has committed a material breach of the trust, labors under a springing conflict of interest, is easily susceptible to undue influence, demands excessive compensation, or for “other good cause.” See *Trolan v. Trolan* (2019) 31 Cal.App.5th 939, 958-960; *Estate of Cairns* (2010) 188 Cal.App.4th 937, 949-950; *Claypool v. Wilson* (1992) 4 Cal.App.4th 464, 676-677. “If the court finds that the petition for removal of the trustee was filed in bad faith and that removal would be contrary to the settlor's intent, the court may order that the person or persons seeking the removal of the trustee bear all or any part of the costs of the proceeding, including reasonable attorney's fees.” §15642(d). The Court has received and reviewed the petition and response. Parties to advise whether this matter can be resolved using the summary dispute resolution procedures (§§ 1022, 1046, 9620) with ordinary briefing (CCP §§ 437c, 1010, 1005(b), 1005.5, and CRC 3.1306). See *Dunlap v. Mayer* (2021) 63 Cal.App.5th 419, 426. If not, parties to select trial date(s).

13. **In re Nigro Family Trust (PR12293)**. No appearance is necessary. This was to be the date for oral argument on a trust dispute addressed via the summary procedures. No briefing was submitted. This dispute was reportedly settled (see CM-200 dtd 04/15/24). Petitioner apparently tried to have the case dismissed (see CIV-110 dtd 06/20/24). Unless this Court hears otherwise, a complete dismissal will be entered.
14. **In re Patton Family Trust (PR12460)**. See #10.

### 10:00 a.m.

15. **Conservatorship of Kohler-Crowe (PR9006)**. Although conservator proffered good cause for the extensive delays associated with the presentation of the 12<sup>th</sup> accounting, the Court is becoming concerned that perhaps the Public Guardian might be needed. Court intends to re-appoint counsel for the conservatee if the accounting is not completed forthwith.
16. **Guardianship of Jones (PR12519)**. This is a petition to establish an out-of-county guardianship by paternal grandfather and step-GM based on alleged domestic disturbances. Both the biological mother, and the biological father, object. There is a related family law case between the parents (FL15791) wherein both parents accuse one another of rampant DV and neglect. However, as soon as the guardianship petition was on file, both parents reached an agreement to drop “everything” (four DVROs and two RFOs) in the family law case. There is at present nothing pending in the family law case. Court investigative report is reviewed. Court reminds petitioners that §3041 requires proof 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.” Parties to agree upon trial date.



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**17. In re Claim of Garibay (PR12522).** This is a petition for appointment of a guardian ad litem and approval of a minor's compromise. Any interested and fully competent person may apply to serve as guardian ad litem, provided that there are no actual or potential conflicts of interest. CCP §372. The minor's biological mother seeks appointment. The papers on file do not disclose any actual or potential conflict, but likewise fail to include the required "Attachment 6" explanation. Even if the application is cured and granted, both of the minor's parents are needed to bind the compromise unless the parents are currently cohabitating or the applicant has primary "care, custody, or control of the minor." Probate Code §3500. There is no evidence provided by petitioner confirming her standing to proceed without the minor child's father (Jesus). In terms of the merits, the petition to compromise must include a full disclosure of all information that has any bearing on the reasonableness of the settlement reached. See CRC 7.950; in accord, *Chui v. Chui* (2022) 75 Cal.App.5th 873, 903-904; *Pearson v. Superior Court* (2012) 202 Cal.App.4th 1333, 1337; *Espericueta v. Shewry* (2008) 164 Cal.App.4th 615, 627. This Court cannot approve a settlement representing only 1/3 of the available insurance policies without knowing something about the injuries suffered by the other claimants. There is also a disconnect regarding the actual policy limit for Progressive, Geico UIM, and CSAA UIM, as the amounts alleged in the papers do not seem to correlate. The Court prefers to see the Dec Page for all three. In addition, more information is required to determine the propriety of Calstar AMS receiving the entire med-pay policy and if former counsel was on the clock when that happened. Finally, although counsel explains some of her effort supporting the 25% contingency fee, without a summary of the actual hours expended in the case sufficient to permit a baseline lodestar calculation (see CRC 7.955(b)(2) and (8)), this Court is not prepared to approve a 25% contingency fee. Courts have discretion to award what is reasonable under the circumstances, and are not required to give blind allegiance to amounts set forth in contingency fee agreements. See Probate Code §3601(a); CRC 7.955(a)(2) and (b); CRPC 1.5; in accord, *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175-1178; *Gonzalez v. Chen* (2011) 197 Cal.App.4th 881, 885-886; *Goldberg v. Superior Court* (1994) 23 Cal.App.4th 1378, 1382; *Ojeda v. Sharp Cabrillo Hospital* (1992) 8 Cal.App.4th 1, 17; in accord, *L.C.C. by and through Callahan v. United States*, WL16579320 at \*3-4 (S.D. Cal. 2022). Counsel must confirm that she is not receiving any contingency or hourly fee associated with the other two claimants.

**1:30 p.m.**

**18. In re Claim of Myers (PR12525).** This is a petition for appointment of a guardian ad litem and approval of a minor's compromise. Any interested and fully competent person may apply to serve as guardian ad litem, provided that there are no actual or potential conflicts of interest. CCP §372. The Court is unable to review the GAL petition at this time, but will hopefully do so by the time of the hearing. As for the compromise itself, both of the

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minor's parents are needed to bind the compromise unless the parents are currently cohabitating or the applicant has primary "care, custody, or control of the minor." Probate Code §3500. There is no evidence provided by petitioner confirming her standing to proceed without the minor child's father (Justin). In terms of the merits, the petition to compromise must include a full disclosure of all information that has any bearing on the reasonableness of the settlement reached. See CRC 7.950; in accord, *Chui v. Chui* (2022) 75 Cal.App.5th 873, 903-904; *Pearson v. Superior Court* (2012) 202 Cal.App.4th 1333, 1337; *Espericueta v. Shewry* (2008) 164 Cal.App.4th 615, 627. In addition, the petition indicates that Travelers used its med-pay and yet there is still \$8,025.99 owing out of the settlement funds. Finally, this Court cannot approve a settlement without knowing insurance policies available and whether other claimants exist.

**19. Marriage of Dunn (FL18239).** Settlement Conference, Day 2

**20. EBF Holdings, LLC v. Amer Smoke Shop Inc. (CV66228).** This is a collections case. On 11/16/23, plaintiff lent defendant Amer Smoke Shop (dba Sonora Smoke Shop) \$80,000 in exchange for future receipts totaling \$111,200. Although plaintiff was able to recoup a percentage of receipts for some period of time, that self-help option ended and plaintiff has reportedly been unable to recoup the balance owed \$45,175.00. Both defendants were reportedly sub-served through an individual authorized to receive the papers. Service is imperfect for the following reasons:

To effectively sub-serve an individual, the plaintiff must first demonstrate that he cannot with reasonable diligence effectuate personal service. CCP §415.20(b). The term *reasonable diligence* denotes a thorough, systematic investigation and inquiry conducted in good faith by the party or his agent or attorney. *Watts v. Crawford* (1995) 10 Cal.App.4th 743, 749. Ordinarily, three attempts at personal service at an address known to be associated with the defendant is sufficient to graduate to sub-service. *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 185; *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1182; *Bein v. Brechtel-Jochim Group, Inc.* (1992) 6 Cal.App.4th 1387, 1392. Thereafter, the plaintiff may leave the summons and complaint at the person's home (with a competent adult member of the household) or usual place of business (with an adult apparently in charge), who shall be informed of the contents thereof and whose relationship with the person to be served makes it more likely than not that they will deliver process to the named party. CCP §§ 415.20(b) and 416.90; *Ellard v. Conway* (2001) 94 Cal.App.4th 540, 546. There is no declaration of due diligence showing attempts to personally serve Mr. Wehbeh, and the Proof of Service provided indicates that Mr. Mugher was not an agent for the corporation but instead a person in charge at a CMRF – but the address used is for the shop, not a B&P §17538.5 MRF. See *Lebel v. Mai* (2012) 210 Cal.App.4th 1154, 1163.

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As for the corporation, service may be made upon “the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager [or] a person authorized by the corporation to receive service of process.” CCP §416.10(b). The fact a person is authorized to receive documents on behalf of a corporation and to sign postal receipts acknowledging delivery does not mean he or she is authorized to receive process on behalf of the corporation. *Dill v. Berquist Const. Co., Inc.* (1994) 24 Cal.App.4th 1426, 1437. Since the POS refers to Mr. Mughler as an agent for a MRF, and not for the corporation itself, the service is insufficient.

If the service can be resolved, the balance of the request for entry of judgment on the first cause of action (only) is ready for approval.

**21. Petition of M.M. (CV66344).** Confidential (age) name change.