

Department 5 Probate Notes for Friday, November 15, 2024

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8:30 a.m.

- 1. Estate of Costa (PR12441).** No appearance is necessary. This was to be an §8800 review hearing, but the final I&A is already on file. Matter can go off-calendar.
- 2. Estate of Babbitt (PR12375).** This is a petition for distribution and allowance of proposed fees. The petition does not specifically address how petitioner intends to take title to the real property, or how she intends to transfer title to the multitude of registered vehicles identified in the I&A. It would appear that significant work will be required before any discharge can be issued. However, assuming petitioner intends to receive all of the items, the statutory fee is properly calculated. As for the request for extraordinary fees, trial courts have broad discretion to consider all relevant factors to determine whether an award of extraordinary fees is appropriate in a particular case. The attorney has the burden to show the need for the extraordinary services and the extent and value of those services. See *Estate of Trynin* (1989) 49 Cal.3d 868, 874; *Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1446. However, “every probate attorney should be fully and fairly paid for his services, having in mind their nature, their difficulty, the value of the estate, and the responsibility thus cast upon the counselor.” *Estate of Byrne* (1898) 122 Cal. 260, 266. Having reviewed the whole of the case file, this Court notes that *responding* to creditor claims is ordinary, not extraordinary, unless and until it ripens into seriously-contemplated litigation (see Probate Code §§ 9250, 9256; CRC 7.703(c)). That line in the sand occurred on 05/10/24 when a special hearing took place to address those creditor claims after they were rejected. Using the blended rate of \$400/hr, compensation for those three hearings in the amount of \$1,200.00 is warranted. As for the time spent at petitioner’s property helping the claimants go through personal property (4.5 hrs) this was no doubt helpful to petitioner personally, and arguably done to avoid further litigation, but standing by watching family rummage through sheds looking for stuff they wanted cannot be justified at an attorney’s regular billing rate. At the very most, \$150/hr can be justified, for an additional \$675.00. Absent argument or a demand for an evidentiary hearing, counsel may receive an extraordinary fee of \$1,875.00.
- 3. Estate of Carlson (PR12303).** This is a petition for distribution and allowance of proposed fees. The petition does not state how the heirs intend to take title (tenants in common or joint tenancy), or how the legal fees shall be paid given the absence of liquidity. Assuming satisfactory responses at the hearing, the petition is otherwise ready for approval.
- 4. Estate of Gallegos (PR12463).** No appearance is necessary. This was to be an §8800 review hearing, but the final I&A is already on file. Matter can go off-calendar.

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5. **Estate of Jordan (PR12527).** This is a petition to admit a will to probate and to appoint petitioner's as the personal representative thereof. As to the former, this Court notes that the will does not have witness signatures and so there must be independent proof by clear and convincing evidence that, at the time the testator signed the will, the testator intended the will to constitute the testator's will. Probate Code §§ 6110(c)(2), 6111.5. As to the latter, the will nominates "Robin Kathaleen Jordan" to serve as executor, not "Robin Sullivan" – so additional evidence will be needed to connect these dots. Counsel to advise whether proceeding testate or intestate makes any difference in regards to the distribution.
6. **Estate of Vochatzer (PR12382).** No appearance is necessary. This is a petition for distribution and allowance of proposed fees. The petition is approved in all respects. Special kudos to counsel for recognizing that if the estate has no tax obligation, donation of personal effects results in a loss for purposes of the statutory fee. For future reference, if the tax donation can be used by one of the beneficiaries, it can be monetized as part of the distribution. Regarding the minor, since petitioner has elected to proceed with deposit to a blocked account under Georgia law, and not California law, the receipt needed for discharge will have to include any court order needed to establish said blocked account, as well as the receipt itself. It might be easier to establish GAL and deposit order – but that is counsel's option. Court intends to enter proposed order as presented.
7. **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 has been challenging to determine who qualifies for direct notice since the will makes reference to ambiguous incorporated letters. While petitioner is presumptively correct that the submitted letters may not be substantively sufficient to qualify for §6130 treatment, the purpose of the order for further notice was to give those persons identified in the letters notice and an opportunity to be heard on the §6130 issue. It was not for petitioner to decide unilaterally that the letters were not good enough to be included in a distribution plan. The revised Notice does not mention Helga, so further clarification is required.
8. **Estate of Loflin (PR12533).** Although individuals untrained in the law are entitled to represent themselves in probate matters, and many do quite well on their own, the petition filed herein has so many defects that this Court cannot even tell if this is a petition for letters testamentary or letters of administration. There is no proof of publication, no nominations/declinations from those with superior priority, no bond (or waivers), no identification of the heirs in Para 8, and no proof of service to any heirs (despite a vague reference to several). Petitioner will be strongly encouraged to seek legal assistance.

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9. **In re Hardin Trust (PR12351).** This trust petition has just passed its one-year mark, which for this Court represents an undesirable delay. When this matter commenced, it was a rather ordinary petition to compel an accounting and swap out the acting trustees for a professional. Shortly thereafter, the trustees petitioned for approval of the now-completed accounting, signaling a quick end to the dispute. Objections were filed, including a second request to remove the trustees. The matter was set for trial, but vacated at the request of the parties. At the last hearing, no parties proposed a professional to take over, the acting trustees declined to voluntarily step down, a majority of the parties objected to imposing upon the acting trustees a bond, and a suggestion was made that a *Breslin* mediation would be scheduled. No party has filed any update since that 09/13/24 hearing, so this Court is uncertain where the parties/issues stand. Absent good cause, this Court intends to set the trial of this matter. 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. In the interim, this Court also intends to appoint on an interim basis an unbonded limited-purpose receiver to pour through the books and provide this Court a clear picture of what the trust res consists of.
10. **In re Wick Family Trust (PR12418).** Review hearing to ascertain status of settlement agreement and dismissal or entry of stipulated judgment.
11. **In re McKenry Living Trust (PR12518).** No appearance is necessary. This is a petition to declare an untethered asset as 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

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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 enter the second proposed order.

12. **In re Light Living Trust (PR12504).** No appearance is necessary. This is, among other things, a §§ 15660/17200 petition to fill a vacancy left in the office of trustee. The settlor passed away on 09/20/2022. The only nominated successor trustee (Tomara) assumed the office but has since passed away. Given that no trustee currently manages the trust, there exists a vacancy in the office of trustee. See §15643(d). By statute (§15660), the vacancy “shall be filled” in one of three ways: (1) following the “practical method of appointing a trustee” as set forth in the instrument; (2) by a trust company that has agreed to accept the trust on agreement of all adult beneficiaries; or (3) on petition of any interested person, in the court’s discretion, giving due consideration to the wishes of the beneficiaries. Petitioner, while not nominated to serve in any fiduciary capacity, might qualify for appointment under Probate Code §15660 if she can show she has statutory priority as a personal representative or “a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding.” See §48(a); in accord, *Colvis v. Binswanger* (2023) 96 Cal.App.5th 393, 397-399; *Estate of Sobol* (2014) 225 Cal.App.4th 771, 782-783. She does not allege the former. As to the latter, although petitioner does not have a direct property right in the trust res, it is noted that she is listed as the alternate beneficiary should Tomara fail to survive decedent. Tomara did survive, but failed to receive the trust res before her passing. As such, Tomara’s *estate* has the requisite property interest. A proceeding to administer *that* estate (PR12495) has been commenced by petitioner, and letters have been issued. As such, petitioner has standing here.

The trust instrument identifies the subject property as an asset of the trust (see II.A. and Schedule A), at least as of December 2011 when the trust was established. 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; *Estate of Heggstad* (1993) 16 Cal.App.4th 943, 950-951. The litigation guarantee shows that the property is presently in the name of decedent/settlor, and not the trust. Since the settlor retained for himself the right to control all trust property (see III.B. and VII.B.), the fact that it was not in the trust at the time of his passing is not necessarily a product of innocent error. It is entirely possible that decedent/settlor decided against placing, or keeping, the property in trust. However, since decedent had no will at all, and the chain of title shows that the

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property was never in the trust, the more reasonable inference is that decedent innocently failed to deed the property into the trust. Argument on the topic was sufficient to persuade this Court that sending the property through intestacy was contrary to decedent's intentions in establishing an otherwise empty trust. Court intends to sign the proposed order.

- 13. Estate of Cascio (PR12396).** This is a probate proceeding reportedly ready for dismissal pursuant to §12251. Counsel has repeatedly promised to submit the required declaration. Fingers crossed it happens this time.

10:00 a.m.

- 14. Conservatorship of Nelson (PR9010).** This 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 some level of conservatorship, and that that the conservators are serving the conservatee's best interests. This Court suspects that the conservatee likely qualifies for elevation to a limited conservatorship and intends to inquire if doing so would impact his stable housing.
- 15. Conservatorship of McLaughlin (PR12309).** This 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. However, Court is still waiting for 6-month accounting, which was to be filed by this day's hearing. Counsel to advise.
- 16. Conservatorship of Fueg (PR11626).** This is on for the annual review and accounting, but at present there is nothing in the court file.
- 17. Conservatorship of Martinez (PR9787).** No appearance is necessary. This 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. Court wishes to remind conservators that conservatee's decrease in spontaneous activity outside the studio should be considered as a symptom of depression, and perhaps more compulsory outdoor activity is warranted.

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18. **Conservatorship of Babros (PR10050).** No appearance is necessary. This 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. Court to set annual review date.
19. **Conservatorship of Darr (PR11109).** No appearance is necessary. This 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 limited conservatorship, that a limited conservatorship remains the least restrictive alternative for the conservatee's protection, and that that the conservators are serving the conservatee's best interests. Court to set annual review date.
20. **Conservatorship of Wine (PR12276).** No appearance is necessary. This 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 limited conservatorship, that a limited 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.
21. **Guardianship of Hickie (PR12163).** This is to be the annual review of this guardianship which is soon to terminate by operation of law. There is no GC-251 on file.
22. **Guardianship of Jones (PR10177).** This is to be the annual review of this guardianship which is soon to terminate by operation of law. There is no GC-251 on file.
23. **Guardianship of Hernandez (PR10832).** This is related to #27. This is a hearing to evaluate the visitation schedule the guardians agreed upon in open court on 10/11/24. According to the guardians, bio mom is corrupting the children with empty promises of freedom, cell phones, and the option to return to her care. Since there is no petition to terminate guardianship still on calendar, and the guardians oppose continued visits, the §3041 factors will have to be considered at an evidentiary hearing, as well as the best interests for noncustodial visits. Trial date to be set.
24. **Guardianship of Hicks (PR12524).** This is related to #25 and #26. This is a petition by the paternal grandmother to establish a guardianship over two young men. Because the proposed wards have been living with petitioner full-time for more than six months, petitioner is entitled to the §3041 stability/continuity presumption despite the absence of

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consent from bio mom. There are competing petitions. Court still awaiting investigative report, and will consider appointment of counsel for the proposed wards. Court to provide parties with chambers interview (Minute Order dtd 10/11/24, FL16613). Bio mom had competing TECO in FL16613, which was denied, and no further RFO has been filed.

25. **Guardianship of Hicks (PR12532).** This is related to #24 and #26. This is a petition by the maternal grandmother to establish a guardianship over two young men. Because the proposed wards have not been living with petitioner, she must satisfy the §3041 conditions unless bio dad and bio mom consent. There are competing petitions. Court still awaiting investigative report, and will consider appointment of counsel for the proposed wards. Court to provide parties with chambers interview (Minute Order dtd 10/11/24, FL16613).
26. **Guardianship of Hicks (PR12531).** This is related to #24 and #25. This is a petition by the maternal grandfather and maternal step-mother to establish a guardianship over two young men. Because the proposed wards have not been living with petitioners, and they do not have bio dad's consent, they must satisfy the §3041 conditions. There are competing petitions. Court still awaiting investigative report, and will consider appointment of counsel for the proposed wards. Court to provide parties with chambers interview (Minute Order dtd 10/11/24, FL16613). Maternal grandfather has a related action (FL18426) in which visitation with the proposed wards has already been ordered.
27. **Guardianship of Hernandez (PR11351).** This is related to #23. This is a hearing to evaluate the visitation schedule the guardians agreed upon in open court on 10/11/24. According to the guardians, bio mom is corrupting the children with empty promises of freedom, cell phones, and the option to return to her care. Since there is no petition to terminate guardianship still on calendar, and the guardians oppose continued visits, the §3041 factors will have to be considered at an evidentiary hearing, as well as the best interests for noncustodial visits. Trial date to be set.
28. **Guardianship of Trevino (PR10483).** This is to be the annual review of this guardianship which is soon to terminate by operation of law. There is no GC-251 on file.
29. **Guardianship of Bisset (PR12210).** There is no GC-251 on file.
30. **Guardianship of Harwell (PR12538).** This is a petition by the paternal grandparents to establish guardianship over three minor children without the consent of either bio parent. Court investigator was appointed at the last hearing. Proposed wards reside in common residence with proposed guardians and bio parents, but bio parents advise they have secured alternate housing.