

## Department 5 Probate Notes for Friday, November 22, 2024

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### 8:30 a.m.

- 1. Estate of Harvey (PR12355).** This is a petition for final distribution and allowance for fees. Because this proceeding involves a remarkably loose holographic will directing a distribution which differs from intestacy law, decedent's next of kin (Cindy McIntire) – who filed a nomination but no disclaimer or waiver of notice – should have been served with a *courtesy* copy of the petition. See §§ 1202, 1206, 11601(b). Counsel may present anything from her reflecting her understanding that she takes noting. In terms of the fees and costs, those are approved. Court inquires about how petitioner intends to take ownership of the vehicles and, more importantly, the firearms. All of this will be necessary before discharge can be granted.
- 2. Estate of King (PR11586).** Before the Court this day is a second hearing on the petition for final distribution in a case released into the wild on 10/26/2018. Pursuant to Probate Code §§ 11000 and 11601, notice of this petition was to have been given to all interested persons, including those requesting special notice. A review of the Court file indicates that several persons *might* be entitled to notice (Sheryl King, Ruth King, and John Viglienzoni) but the Notice of Hearing filed herewith (DE-120) does not include page 2, so this Court is uncertain as to who should, and did, receive notice. There is a minor miscalculation regarding counsel's statutory fee. Pursuant to Probate Code §10810(b), the fee shall be based upon "the total amount of the appraisal of property in the inventory, plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales." The real property sold for \$105,000.00, and the \$29,500.00 motorhome was transferred in exchange for a waiver of John Viglienzoni's \$2,350.00 creditor claim. With the cash on hand of \$2,731.66, the statutory fee basis was \$110,081.66, not \$137,331.00. The statutory fee is \$4,302.45. With regard to the request for \$2,800.00 in extraordinary fees to defend a \$2,350.00 claim in CVL62521, this Court will approve the fee based on the representations made in open court by counsel in that case. With regard to the request for \$14,000.00 in extraordinary fees to defend the Merced partition action, this Court made an indication that \$8,750.00 was more than sufficient. Counsel objected, and requested time to submit additional CRC 7.702 information. At present there is nothing in the court file to review.
- 3. Estate of Myers-Bridle (PR12535).** This is a petition to administer a rather sizable intestate estate. Although petitioner has *presumptive* priority to serve in that capacity (see §§ 8462(a) and 8463), there is a rather obvious *potential* conflict of interest if any claim is made that decedent's property passes via §6401(a) versus §6401(c). A conflict of interest is grounds for denying an appointment. See §8402; in accord, *Estate of Hammer* (1993) 19 Cal.App.4th 1621, 1641; *Estate of Guzzetta* (1950) 97 Cal.App.2d 169, 172. Although a bond serves to lessen (at least in concept) the conflict, that only works if the heirs have

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notice. The better solution, if §6401(a) is even contemplated, is to appoint a neutral GAL for the minors to serve as co-administrator. Does decedent have any immediate family who could serve in that capacity. With a GAL, bond could probably be waived and those costs could be avoided.

4. **Estate of Ward (PR12198).** This was to be the continued §12200 review hearing, but there is neither an updated status report nor a petition for distribution on file.
5. **Estate of Tarone (PR12407).** This is a petition for final distribution and allowance for fees. There was a slight miscalculation in the statutory fee. Since the residence was appraised at \$485,000, and sold for \$474,500, the statutory fee is actually \$12,490.00. With that adjustment, the petition is otherwise ready for approval.

### 10:00 a.m.

6. **Conservatorship of Crowe (PR9778).** 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, and that a general conservatorship remains the least restrictive alternative for the conservatee's protection. However, this Court is at present unable to make the finding that the conservator is serving the conservatee's best interests. The conservator has done a remarkable, indeed Herculean, job caring for these individuals on her own, but the passage of time is no friend. Personal shortcomings impact her ability to care for one, let alone eight, dependent humans. The time has come to institute a succession plan for these individuals.
7. **Conservatorship of Kohler-Crowe (PR10381).** 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, and that a general conservatorship remains the least restrictive alternative for the conservatee's protection. However, this Court is at present unable to make the finding that the conservator is serving the conservatee's best interests. The conservator has done a remarkable, indeed Herculean, job caring for these individuals on her own, but the passage of time is no friend. Personal shortcomings impact her ability to care for one, let alone eight, dependent humans. The time has come to institute a succession plan for these individuals.
8. **Conservatorship of Kohler-Crowe (PR9006).** 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, and that a general conservatorship remains the least restrictive alternative for the conservatee's

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protection. However, this Court is at present unable to make the finding that the conservator is serving the conservatee's best interests. The conservator has done a remarkable, indeed Herculean, job caring for these individuals on her own, but the passage of time is no friend. Personal shortcomings impact her ability to care for one, let alone eight, dependent humans. The time has come to institute a succession plan for these individuals.

9. **Conservatorship of Kohler-Crowe (PR9964).** 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, and that a general conservatorship remains the least restrictive alternative for the conservatee's protection. However, this Court is at present unable to make the finding that the conservator is serving the conservatee's best interests. The conservator has done a remarkable, indeed Herculean, job caring for these individuals on her own, but the passage of time is no friend. Personal shortcomings impact her ability to care for one, let alone eight, dependent humans. The time has come to institute a succession plan for these individuals.
10. **Conservatorship of Kohler-Crowe (PR10654).** 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, and that a general conservatorship remains the least restrictive alternative for the conservatee's protection. However, this Court is at present unable to make the finding that the conservator is serving the conservatee's best interests. The conservator has done a remarkable, indeed Herculean, job caring for these individuals on her own, but the passage of time is no friend. Personal shortcomings impact her ability to care for one, let alone eight, dependent humans. For this particular conservatee, it would appear that the conservator is unable to establish his required Medi-Cal coverage, raising the stakes on his out-of-residence placement. The time has come to institute a succession plan for these individuals.
11. **Conservatorship of Zimmer (PR12145).** County to provide update on Behavioral Health and possible LPS petition.
12. **Conservatorship of Kohler-Crowe (PR11454).** 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 (though it appears he would qualify for limited), and that a conservatorship to some degree remains the least restrictive alternative for the conservatee's protection. However, this Court is at present unable to make the finding that the conservator is serving the conservatee's best interests. The conservator has done a remarkable, indeed Herculean, job caring for these individuals on her own, but the passage of time is no friend. Personal shortcomings impact

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her ability to care for one, let alone eight, dependent humans. When asked about his conservatorship the conservatee noted that he has nobody else, which is only true if no succession plan is made.

13. **In re Claim of E.H. (PR12542).** This is a petition to approve compromise of a minor's claim, arising from a rear-end automobile accident two years prior. 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 aunt seeks appointment. The papers on file do not disclose any actual or potential conflict, but likewise fail to explain why no biological parent is making the application. See Probate Code §3500. 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. Although this Court generally needs to see the policy limits for both the at-fault driver and the driver of the car in which the minor was riding, a review of the medical records permits the conclusion that the settlement amount is fair. Finally, although counsel seeks to justify a 33.33% fee for the work in this case, the CRC 7.955 declaration provides no support for that. Best this Court can tell, there was no dispute as to liability, no litigation, and no effort to exhaust the underlying policy and possibly reach UIM. 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 is already receiving an adequate fee from the other clients. Counsel also receives fees on costs, which is a practice many find to be troublesome. Taking all of this into account, this Court will authorize a legal fee for services rendered on behalf of this minor of \$2,500.00.
14. **Guardianship of Smith (PR12161).** No appearance is necessary. The Court, having received and reviewed the GC-251 with attachments, intends to find by a preponderance of the evidence that the guardianship remains necessary/convenient and that the guardians are serving the ward's best interests.
15. **Guardianship of Stacy (PR10715).** This Court is awaiting an updated GC-251. While there is reason to believe that the guardianship is still necessary/convenient, this Court has concerns about the guardian's ability to serve the ward's best interests. As noted in the

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various other cases on calendar involving this family, a succession plan should be put in place. At the very least, the ward shall never be put to the task of doing the guardian's job tending to conservatees.

16. **Guardianship of Gonzalez and Gonzalez (PR12541).** This is a petition by the maternal grandmother to establish a *temporary* guardianship over two young children while the biological father remains on vacation and the biological mother remains uninvolved. The biological mother has provided her consent. Court intends to appoint court investigator. Court directed petitioner to secure consent from biological father.
17. **Guardianship of Kohler-Crowe (PR10759).** This Court is awaiting an updated GC-251. While the is reason to believe that the guardianship is still necessary/convenient, this Court has concerned about the guardian's ability to serve the ward's best interests. As noted in the various other cases on calendar involving this family, a succession plan should be put in place. At the very least, the ward shall never be put to the task of doing the guardian's job tending to conservatees.
18. **Marriage of Gilliatt (FL18038).** On 02/01/24, respondent agreed to equalize petitioner with \$30,000 within 120 days. Petitioner filed an OSC re contempt alleging that respondent has not even tried, let alone succeeded, in making that payment. Court intends to arraign respondent and set the matter for trial.

**1:30 p.m.**

19. **Petition of HCH (CV66047).** Confidential proceeding to change name.
20. **Pahukoa and DeLeon (FL14495).** Scheduled Day 2 of long-cause hearing on petition to establish parental relations and termination of guardianship.

**4:00 p.m.**

21. **County of Tuolumne v. Reis (FL11467).** In chambers conference with minor.

**4:30 p.m.**

22. **Beach v. Glenn (FL18432).** Trial setting and report from minor's counsel regarding proposed stipulation for custody/visitation.