

Department 5 Probate Notes for Friday, December 13, 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=NTRMT0NwMDg5cmlYdzZ6VnBXWWFsUT09>. [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. Conservatorship of Kuffler (PR12289).** This was to be the review hearing for the annual accounting in a limited conservatorship established to assist with management of funds received in a settlement. There is no accounting on file. Counsel to advise.
- 2. Claim of ASH (PR12216).** This is a petition for permission to withdraw funds from a blocked account to pay health care premiums. It is a parent's responsibility to cover a child's health care costs, not the child's. It is also the parent's responsibility to cover housing costs for the child. Court intends to deny the request, but will entertain oral argument from counsel and petitioner.
- 3. 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). There is as yet no POS in the court file. 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.
- 4. Estate of Herell (PR12109).** Court is eagerly awaiting word on whether the claim involving First American Title can be resolved without litigation – and if it is possible to distribute the estate and assign the claim to one of the beneficiaries.
- 5. Estate of Hayes (PR11917).** This is the continued hearing on 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. Counsel in the UD action filed a dismissal on 10/31/24, but that dismissal was entered only in the civil action (CV64343), which counsel signing the CIV-110 did not appear in. Until such time as both actions are properly dismissed, the petition herein must wait in limbo. In the interim, petitioner must clarify (1) how title to the real property will be held (counsel states tenants in common), (2) how petitioner intends to satisfy the sizable legal fees proposed herein (per §10831, petitioner will pay on his own), and (3) how petitioner intends to satisfy the \$35,000 payable to Russell (per counsel, given Russell's default, this may not be paid at all). Court intends to continue the hearing 45-60 days.

Department 5 Probate Notes for Friday, December 13, 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.

6. **Estate of Chapin (PR12286).** No appearance is necessary. This is a petition for final distribution and allowance of fees. Following the earlier hearing, this Court received a supplement to the petition. That supplement adequately addresses the previous concerns regarding calculation of the statutory fee and distribution directly to decedent's trust beneficiaries as a natural step to avoiding a small estate or *Heggstad* redirection. Court intends to grant the supplemental petition.
7. **Estate of Myers-Bridle (PR12535).** No appearance is necessary. This is a petition to administer an intestate estate. Based on steps taken at, and since, the earlier hearing, this Court finds that the GAL's waiver of bond is effective and that Letters can be issued forthwith. Court intends to enter the order and issue the Letters.
8. **Estate of Schnell (PR12481).** No appearance is necessary. The Court, having received and reviewed the petition for allowance of fees and distribution of assets, finds by a preponderance of the evidence that the statutory fees sought are properly calculated, the litigation costs are reasonably necessary to the conduct of the litigation, and the distribution plan is reasonable under the circumstances (assuming of course that petitioner is applying for a "sibling of the year" award). Court intends to grant the petition and enter the order.
9. **Estate of Thomas (PR12469).** 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. At the last hearing counsel advised that a supplemental petition would be filed, but so far there is nothing on file.
10. **Estate of Osterholm (PR12534).** No appearance is necessary. The Court, having received and reviewed the petition for Letters of Administration, finds that the petition is proper in all respects. Court intends to grant the petition and issue the Letters without bond. Court also intends to set §8800 and §12200 review hearing dates.
11. **Estate of Briscoe (PR12302).** There is a notable, and curious, disconnect in this petition for allowance and distribution. The fees sought, and costs reimbursed, are reasonable – but the distribution plan having the entirety of the estate go to the decedent's trust via the

Department 5 Probate Notes for Friday, December 13, 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=NTRMT0NwMDg5cmlYdzZ6VnBXWWFsUT09>. [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.

Seventh or Eighth recital is unclear because the Fifth and Sixth Recitals reference numerous specific bequests which are not addressed. Since the will was made less than two months prior to her passing, it seems that decedent had in her possession all of those personal items listed, so where did those go? Is there an ademption/abatement issue (§§ 11750, 21117(a), 21402) which the Court needs to be sensitive to? See *Estate of Mason* (1965) 62 Cal.2d 213, 215; *Blech v. Blech* (2018) 25 Cal.App.5th 989, 1003-1004; *Brown v. Labow* (2007) 157 Cal.App.4th 795, 807-809; *Estate of Ehrenfel* (1966) 241 Cal.App.2d 215, 222-223.

12. **Estate of Rossman (PR12391)**. No appearance is necessary. The Court, having received and reviewed the petition for allowance of fees and distribution of assets, finds by a preponderance of the evidence that the statutory fees sought are properly calculated, the litigation costs are reasonably necessary to the conduct of the litigation, and the distribution plan is reasonable under the circumstances. Court intends to grant the petition.
13. **Estate of Nicholls (PR12016)**. No appearance is necessary. The Court, having received and reviewed petitioner's §12201 status report, intends to find by a preponderance of the evidence that good cause exists to extend administration of this estate. However, this being the second such extension, petitioner is expected to keep his foot on the pedal and bring this bus into the depot soon. Court intends to set §12200 review hearing for 90 days, with an OSC re sanctions if no petition for allowance/distribution is on calendar.

10:00 a.m.

14. **Conservatorship of Heard (PR9661)**. No appearance is necessary. The Court, having received and reviewed the court investigator's §1850 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, and that the conservator is acting in the conservatee's best interests. Court intends to set annual review date.
15. **Conservatorship of Tolhurst (PR11138)**. At the previous hearing, counsel was invited to review §§ 1840 et seq and 1853 regarding the procedure to use when a conservatee going missing. Counsel advised that the accounting can be completed soon, and that a petition to establish a trust would be pursued. Nothing has been filed since the last hearing.
16. **Conservatorship of Smith (PR10905)**. No appearance is necessary. The Court, having received and reviewed the Sixth Accounting, finds that the prayer for fees, and for recoverable costs, is reasonable. The Court further finds that the bond amount remains

Department 5 Probate Notes for Friday, December 13, 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.

sufficient for present purposes. Court intends to approve the accounting and set a biennial date to review the Seventh accounting in August of 2025.

17. **Claim of CMP (PR12546).** This is a petition to approve compromise of a minor's claim, arising from a "t-bone" automobile accident. 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 mother seeks *de facto* appointment (there is no actual GAL application on file). 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 Mother confirming her standing to proceed without the minor child's father. 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 25% fee for the work in this case, there is no CRC 7.955 declaration providing 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 Mother. 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 \$1,500 fee for services rendered on behalf of this minor. The new balance shall be deposited into the proposed blocked account.
18. **Guardianship of Hiller (PR12170).** 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 a guardianship remains necessary/convenient and that the guardian is serving the ward's best interests. Court intends to set annual review date.

Department 5 Probate Notes for Friday, December 13, 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.

19. **Guardianship of Roberts (PR12554).** This is a petition by the *maternal* (petitioner says “paternal”) grandfather to establish a temporary guardianship over two minor children who do not currently reside with the proposed guardian. Bio mom has nominated petitioner to serve in that capacity. Petitioner failed to provide a complete GC-212 (see question 3). Petitioner sought to waive notice to the current caretaker, Colleen Brennan, who is the other grandparent to the proposed wards. Bio dad is reportedly “unknown.” The children appear to have been bounced around quite a bit, which begs the question where has petitioner been the past few years? Ms. Brennan had temporary custody as a result of a DVRO filed against bio mom in April (see FL18563), but the wards are presently under the jurisdiction of the juvenile court (see JV8436 and JV8437) with a review hearing next week.
20. **Guardianship of De la Rosa (PR12180).** This is a guardianship involving three minor children. Pursuant to Probate Code §1513.2(a), every year the guardian shall complete and return to the court a status report (GC-251). The court clerk is required to provide a reminder to the guardian, along with a blank GC-251, which did occur herein on 10/07/24. Guardian to advise as to the status.
21. **Guardianship of Mutchler (PR12159).** Provided that all parties so stipulate, and this Court can make the finding by a preponderance of the evidence that the best interests of the ward are being met, the guardianship can be summarily terminated with visitation orders in place for the departing guardian under Probate Code §1602.
22. **Guardianship of Ireland (PR11484).** Bio mom petition to remove current guardians and replace with maternal aunt, based largely on CRF74990 and CRF70157. Court investigator recommends leaving guardians in place based largely on Probate Code §1610(a). Court previously indicated that §2650 hearing would await resolution of criminal cases. Minor’s counsel to advise.
23. **Guardianship of James (PR11221).** No appearance is necessary. The court, having received and reviewed the GC-251 reports with attachments, intends to find by a preponderance of the evidence that these guardianships remain necessary/convenient and that the guardians are serving the wards’ best interests. Court intends to set annual review date.
24. **Guardianship of Lima (PR12496).** This is a petition by the maternal grandmother to secure a non-consensual guardianship over two children – one with a recent 5150 hold. Proposed wards are of age to be heard (§1514(e)(2)), and were interviewed this week. Biological father objects to the guardianship, and notes that he has sole physical and legal custody in related dissolution action (FL16854). Court to address heightened burden for

Department 5 Probate Notes for Friday, December 13, 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.

petitioner under §3041. Court to await receipt and review of investigative report. Consider coordination of this and family case here or in D.2. Bio mom has no visits allowed in related family case due to drug use, and abruptly left the prior guardianship hearing. Minor's counsel to provide insight.

25. **Guardianship of Calles (PR11417).** No appearance is necessary, as this guardianship has terminated by operation of law.
26. **Guardianship of McLoughlin (PR11482).** No appearance is necessary. The court, having received and reviewed the GC-251 reports with attachments, intends to find by a preponderance of the evidence that these guardianships remain necessary/convenient and that the guardians are serving the wards' best interests. Court intends to set annual review date.
27. **Guardianship of Brennan (PR11461).** This is a petition by the bio mom to terminate a long-standing guardianship. Both the ward and the guardian consent to termination, In order to determine that this is in the best interests of the ward, court will need to appoint minor's counsel and conduct an in-chambers meeting with the ward.

Special Set Conservatorship of Jones (PR12552)

1:30 p.m.

28. **Petition of LB (CV66538).** Confidential hearing to change name.
29. **EBF Holdings LLC v. Amer Smoke Shop (CV66228).** Default prove-up.
30. **Marriage of Ellenberger (FL15915).** Mother failed to appear at mediation. Share minute order re: in-chambers conference.