

Department 5 Probate Notes for Friday, December 20, 2024

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8:30 a.m.

- 1. Claim of E.C. (PR12548).** This is a petition to approve compromise of a minor's claim, arising from a dog bite incident. There are only three persons authorized by law to compromise a minor's injury claim: (1) the minor's legal guardian (Prob. Code §§ 2401, 2451, 2462); (2) the minor's appointed guardian ad litem (CCP §372(a)(2)); or (3) the parent having care, custody, or control of the minor (Prob. Code §3500). There is no guardianship, no application for GAL, and no evidence from Petitioner that he has primary care, custody, or control of the minor. This is a presumably curable matter. 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. There are no medical records attached, and no reference to treatment except for a visit to the emergency room and a description that the claimant has fully recovered from whatever injuries she sustained. There are no medical bills listed, incurred or to be paid. There are no legal fees either, owing to the apparent assistance by counsel for the California Automobile Insurance Company. It is unknown if this was an auto, versus renter/homeowner policy, though the carrier name suggests the former. A declaration from the parent describing in detail the basis for standing, as well as the value of the claim, is required.
- 2. Estate of Dobbins (PR12296).** No appearance is necessary. This is a final petition for allowance of fees and distribution of the estate. Having received and reviewed the petition, this Court finds that the requested fees, costs, and proposed distribution plan are reasonable. Court intends to approve the petition in whole, and execute the order thereon.
- 3. Estate of Howell (PR12465).** Pursuant to Probate Code §8800, petitioner had four months from the issuance of Letters to file a final Inventory & Appraisal. Letters were issued 07/12/24, which puts petitioner outside the four-month period, and yet no I&A appears in the court file. Counsel to advise.
- 4. Estate of Vieira (PR12323).** No appearance is necessary. This is a final petition for allowance of fees and distribution of the estate. Having received and reviewed the petition, this Court finds that the requested fees, costs, and proposed distribution plan are reasonable. Court intends to approve the petition in whole, and execute the order thereon.
- 5. Estate of Gurney (PR12545).** No appearance is necessary. This is a petition to admit a will to probate, and for Letters Testamentary. Regarding the former, this Court will require a DE-131 from all four of the witnesses (the two for the will and the two for the codicil).

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Regarding the latter, although petitioner indicates that co-executor Jill Carne is declining to serve, there is no such declination to act in the court file. Court intends to continue the hearing on the matter.

6. **Estate of Schneider (PR12489).** This is a spousal property petition. Pursuant to §13650(a), a petition of this nature may be filed by the surviving spouse or the spouse's "personal representative." Although the term "personal representative" is not defined therein, that term is generally understood to mean "executor, administrator, administrator with the will annexed, special administrator, successor personal representative, public administrator acting pursuant to Section 7660, or a person who performs substantially the same function under the law of another jurisdiction governing the person's status." Probate Code §58(a). In other words, if the surviving spouse is alive and competent to manage financial affairs, the petition must be filed by the surviving spouse. The pending petition here was filed by Robert Douglas Hinchliffe – who purported to be a "personal representative" but offers no facts from which to make such a finding. Petitioner has supplemented the petition with a Power of Attorney from the surviving spouse giving him power to handle real estate and litigation matters, which includes the pending petition. Petitioner has also provided declinations from the remaining heirs. As a separate concern, petitioner has failed to provide this Court with "the facts upon which the petitioner bases the allegation that all or a part of the estate of the deceased spouse is property passing to the surviving spouse" (§13651(a)(3)) because the petition provides no evidence from which to find that decedent *presently* owns the subject property APN 062-050-047-000. This is a prerequisite given the conclusive nature of any such order hereunder. See §13657. Although the supplemental papers show that decedent had an interest in the property in 1962, that is not sufficient.
7. **Estate of Morales (PR12288).** This probate proceeding began with a petition by decedent's brother to assume the role of personal representative. Thereafter, he declined to serve and instead nominated his son and the other brother's daughter to serve as co-administrators. Since the other brother had statutory priority over his daughter (see §8461(f)), he was required to first file a declination/nomination to make room for her – which he soon did. (Counsel describes this as something the Court did on its own, without acknowledging the legal import of §8461, *Estate of Lewis* (2010) 184 Cal.App.4th 507, 512-513, and *Estate of Garrett* (2008) 159 Cal.App.4th 831, 837.) A "final" report and petition were filed on 11/08/24, followed by a first supplement (11/15/24) adding a requested reserve, and a second supplement (12/03/24) seeking an approved assignment of a beneficiary interest. Although reasonable minds would differ on whether it is proper to treat the State Farm check as an asset of the estate for purposes of the statutory fee – particularly in light of petitioner's decision to reimburse herself with that check – the proposed statutory

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fees for the personal representatives and attorney will be approved. The request for reimbursement for necessary court costs will also be approved, as will the request for reimbursement from family members for related estate expenses. However, the extraordinary fee sought by counsel will not be approved since work associated with a statutorily-mandated accounting (see §10951) is not within the letter or spirit of CRC 7.703(c). As for the assignment, §11604 provides that a trial court “may inquire into the circumstances surrounding the execution of, and the consideration for, the [assignment], and the amount of any fees, charges, or consideration paid or agreed to be paid by the beneficiary.” No information is provided as to the reason for this assignment, which the assignor presumably understands may be treated as a gift for taxing purposes. Nevertheless, given the size of the bequest, this Court does not presume there to have been any fraud or duress associated therewith, and will approve it.

8. **Estate of Meadows (PR12485).** No appearance is necessary. This was to be the §8800 review hearing, but a final I&A is already on file.
9. **Estate of Nichols (PR12411).** This was set as a review hearing to confirm submission of orders and Letters following this Court’s order setting aside the order of dismissal entered 07/19/24. There is nothing on file, suggesting to this Court – yet again – that petitioner is not sufficiently motivated to take seriously the duties and responsibilities of a personal representative, as set forth on her signed DE-147. Does decedent’s “disinherited son” – who filed special notice status – wish to take over the reins?
10. **In re Cianfrone Trust (PR12497).** No appearance is necessary. The relief sought (appointment of successor trustee) having been accomplished, and there being no remaining matters contained within the petition, the Court intends to enter a dismissal of the petition.

10:00 a.m.

11. **Conservatorship of Wine (PR12276).** This is a review hearing set by the Court to try and resolve visitation issues between the conservator and the conservatee’s biological father. The conservator is reminded that, following an evidentiary hearing, this Court granted father alternate weekends under Probate Code §2351(a). Interference with visits is grounds for suspension of powers. See *Conservatorship of Navarrete* (2020) 58 Cal.App.5th 1018, 1030-1031. This proceeding is related to FL13902 and CRF55175.
12. **Guardianship of Ocanas (PR11471).** This is a guardianship involving two minor children. Pursuant to Probate Code §1513.2(a), every year the guardian shall complete and return to

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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.

13. **Guardianship of Stacy (PR10715).** This is related to #19. This is a guardianship involving one minor child, though related to several other probate cases. 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 05/09/24 and again on 09/06/24. Guardian to advise as to the status.
14. **Guardianship of Hernandez (PR10832).** This is related to #16. This was set as a review hearing to determine how well the visits with bio mom (alternate Sat/Sun 10 a.m. – 4 p.m.) have been going. Wards have been interviewed and both expressed a desire to spend this, and possibly more, time with bio mom. Since then, guardians have filed TECO to terminate visits (denied), and a peremptory challenge to this bench officer (untimely). Court intends to appoint minor's counsel.
15. **Guardianship of Hartzell (PR11369).** This is a long-term guardianship of three minors being cared for by an elderly family member. Although this is set for annual reviews, this Court has not heard from the guardian since 12/01/22. Most recently, the guardian complied with her reporting obligation, and appeared in court with the biological father – who requested that the guardianship remain in place. Bio mom had prior motion to terminate guardianship, withdraw. Bio mom has renewed her petition to terminate. Parties to address residence, age, condition of ward, and bio mom's plans. Court to re-appoint investigator and to consider appointing minor's counsel.
16. **Guardianship of Hernandez (PR11351).** See #14.
17. **Guardianship of Hudson (PR11797).** Court to confirm termination of guardianship by operation of law.
18. **Guardianship of Trevino (PR10483).** This is a guardianship with a difficult history and a current placement which suggests that the guardians have fallen short of their duties and responsibilities to care for the ward. A hearing is required to determine if the guardians ought to be replaced.
19. **Guardianship of Kohler-Crowe (PR10759).** See #13.

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20. Guardianship of Harwell (PR12538). This is a petition by the paternal grandparents for temporary letters of guardianship over their three grandchildren based on allegations of parental neglect. All three children have been the subject of juvenile dependency proceedings, and there was a DVRO between the proposed guardian and biological father (FL13439). Although it appears that the biological parents may have given consent to the guardianship in August, it would appear that the biological mother has rescinded that consent and fled with two of the three children. Court requires additional information as to where the children currently reside, and will likely need to have separate guardianship petitions established for each. Court intends to continue the hearing to permit completion of the court investigator's report.

1:30 p.m.

- 21. Aggetta v. Rodriguez (FL16897).** Short cause hearing regarding Father's RFO filed 05/30/24. In 2021, parties agreed to joint legal, sole physical to Mother, and visits to Father 1st, 3rd, 5th weekends Fri @3pm → Mon @ 8am. Father filed recent RFO seeking enforcement of 2021 order. Court to share notes from in-chambers' interviews.
- 22. Petition of HGA (CV66556).** Confidential proceeding to change name.
- 23. Petition of EACR (CV66648).** Confidential proceeding to change name.
- 24. Petition of RHL (CV66268).** Nonconfidential proceeding to change name.