

Department 5 Probate Notes for Friday, January 5, 2024

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8:30 am

- 1. In the Matter of Altheide (PR12358).** On or about 10/24/23, petitioner was admitted to St. Helena Hospital on a §5150. As a result of that admission, he lost his 2nd Amendment right to “own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for a period of five years.” W&I Code §§ 8103. Thirteen days later, petitioner sought to have those rights restored. The District Attorney has the burden of proof to show “that the person would not be likely to use firearms in a safe and lawful manner” by a preponderance of the evidence. The District Attorney typically provides the court with the following records: (1) the facility report “containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility;” (2) the Patient Notification of Firearm Prohibition, which is supposed to include “information regarding how the person was referred to the facility;” and (3) petitioner’s “authorization for the release of the person’s mental health records” or the records themselves. The petition here is incomplete. The District Attorney requests a transfer to Napa County. Pursuant to W&I Code §8103(f)(5), “a person who has requested a hearing from the superior court of his or her county of residence shall be given a hearing ... [however] the superior court *may* transfer the hearing to the county in which the person was evaluated or treated.” [Emphasis Added.] The District Attorney seeks a transfer because it “has no information with which to make an informed decision” as to whether to resist or support petitioner’s request to have his gun rights restored. This is insufficient. Before a transfer can be granted, there must be an affirmative showing that the receiving county in fact has greater access to the aforementioned records. Given that petitioner resides here in Tuolumne County, this county has the presumptively higher interest in whether this individual is allowed to possess firearms.
- 2. Estate of Neubaumer (PR11671).** There is no §12201 report updating the Court on the status of the related action or efforts to distribute property despite the related action. An update is required.
- 3. Estate of Benoit (PR12133).** The §12201 report filed and served on 12/26/23 is delinquent (§12201(b)), omits the required §10950 notice, and fails to provide a sufficient explanation for the four-month delay. Absent a suitable explanation, petitioner shall have a petition for final distribution on file within 30 days. See §12205.
- 4. Estate of Morales (PR12288).** No appearance is necessary. The supplemental filings satisfy this Court’s prior concerns. Petition will be granted.
- 5. Estate of Thorson (PR12190).** No appearance is necessary. Petitioner must include a copy of the Thorson Family Trust. See §§ 11601, 15804; CRC 7.650, 7.902; TCSC Local Rule 5.13.0, 5.18.0.j. Although petitioner may not have been required to give notice to ex-wife, having done so already, continuity (or a waiver) is required. See §§ 1202, 8110, 11601; TCSC Local Rule 5.13.0. Counsel’s basis for the statutory fee is \$345,000.00, not \$400,000.00. See §10810(b); CRC 7.705; TCSC Local Rule 5.20.0. Absent cure, hearing will be continued.

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6. **Estate of Elliot (PR12345).** No appearance is necessary. Petitioner's request to cure a scrivener's error regarding decedent's given name will be granted. Amended Letters and Order will be issued.
7. **In re Hardin Trust (PR12351).** No appearance is necessary. Hearing continued to 02/16/24 to be heard alongside the trustees' petition to settle. Petitioner James T. Hardin to give notice.
8. **In re Parsons (PR12318).** No appearance is necessary. The supplemental filings satisfy this Court's prior concerns. Petition will be granted.
9. **In re Bayers (PR12356).** The petition is incomplete. There must be an Inventory & Appraisal completed by a probate referee (§§ 13152, 13154). Proper notice must be provided to each heir at law (§§ 13152(a)(7), 13153), and stating "address unknown" is inadequate. There must be evidence of decedent's current ownership (§13152(a)(4)), not just a deed from 2005. Petitioner may also wish to engage counsel to determine whether a §13150 petition is necessary given the manner in which title was taken in 2005.
10. **In re Lebherz Trust (PR12344).** Comparing the Schedule with the Third Restatement (Para B) and the Fourth Restatement (Para B), and in consideration of the pour-over will and the absence of competing beneficiaries, the conveyance of the two Wells Fargo bank accounts to the Lebherz Revocable Trust dtd 12/28/09 should be made. See Probate Code §856; *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. However, petitioner must still confirm (1) the absence of any POD/TOD/Totten directive (§5302), and (2) the absence of any objectors (§853).
11. **Estate of Holland (PR12327).** No appearance is necessary. The motion to quash is continued to 05/24/24 at 8:30am, to be decided after the trial on the issue of who should serve as personal representative (currently set for 04/24//24). The subpoenas are stayed, and the record custodians are ordered not to produce any records in response to the subpoenas until further order of this Court. Moving party to give notice; subpoenaing party to notify custodians. Petitioner may wish to consider withdrawing the subpoenas in the interim to avoid any inadvertent premature disclosure.

9:30/10:00/10:30 am

12. **Guardianship of Ireland (PR11484).** Guardians must appear in person. In light of CRF70157, Court must set §2650 hearing and consider suspension of co-guardian powers (§2654) in the interim. Co-guardian is reminded of her right not to incriminate herself. Court investigator to be appointed. Counsel for minor to be appointed.
13. **Guardianship of Poe (PR11620).** No appearance is necessary. Status report is approved. Guardianship remains necessary and convenient. Guardians continue to serve in the ward's best interests. Annual review hearing set for 01/10/25 at 10:00 am.

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14. **Guardianship of De La Rosa (PR11470).** Status report is missing school and health care records.
15. **Petition of Bradfute (CV65670).** Hearing required. Petitioner to present Court with evidence supporting the averment made in Para 7.c. Petitioner must also clarify Para 6. Petitioner must provide sworn voir dire regarding §1279.5.
16. **Guardianship of Mellott (PR11905).** Guardian did not appear at initial hearing on report, or at subsequent continued hearings. Court will issue OSC and send the court investigator to track down guardian (at guardian's expense).
17. **Petition of Wildermuth (CV65687).** Hearing required. Petitioner to present Court with evidence supporting the averment made in Para 7.c. Petitioner must also clarify Para 6. Petitioner must provide sworn voir dire regarding §1279.5.
18. **In re Martin (PR12325).** Hearing required. Update from court investigator (no report on file). No capacity declarations on file. Proof of ownership required before power to sell real property. Are there testamentary instruments supporting averments re: petitioner and estrangement?

3:00 pm

19. **In the Matter of Munsee (PR12326).** On or about 09/07/23, petitioner was admitted to St. Helena Hospital on a §5150. As a result of that admission, he lost his 2nd Amendment right to “own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for a period of five years.” W&I Code §§ 8103. Eighteen days later, petitioner sought to have those rights restored. The District Attorney has the burden of proof to show “that the person would not be likely to use firearms in a safe and lawful manner” by a preponderance of the evidence. The District Attorney typically provides the court with the following records: (1) the facility report “containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility;” (2) the Patient Notification of Firearm Prohibition, which is supposed to include “information regarding how the person was referred to the facility;” and (3) petitioner’s “authorization for the release of the person’s mental health records” or the records themselves. The petition here is incomplete. The District Attorney requests a transfer to Napa County. Pursuant to W&I Code §8103(f)(5), “a person who has requested a hearing from the superior court of his or her county of residence shall be given a hearing ... [however] the superior court *may* transfer the hearing to the county in which the person was evaluated or treated.” [Emphasis Added.] The District Attorney seeks a transfer because it “has no information with which to make an informed decision” as to whether to resist or support petitioner’s request to have his gun rights restored. This is insufficient. Before a transfer can be granted, there must be an affirmative showing that the receiving county in fact has greater access to the aforementioned records. Given that petitioner resides here in Tuolumne County, this county has the presumptively higher interest in whether this individual is allowed to possess firearms.

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20. In the Matter of Schaffernoth (PR12337). On or about 09/26/23, petitioner was admitted to St. Helena Hospital on a §5150. As a result of that admission, she lost his 2nd Amendment right to “own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for a period of five years.” W&I Code §§ 8103. Nine days later, petitioner sought to have those rights restored. The District Attorney has the burden of proof to show “that the person would not be likely to use firearms in a safe and lawful manner” by a preponderance of the evidence. The District Attorney typically provides the court with the following records: (1) the facility report “containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility;” (2) the Patient Notification of Firearm Prohibition, which is supposed to include “information regarding how the person was referred to the facility;” and (3) petitioner’s “authorization for the release of the person’s mental health records” or the records themselves. The petition here is incomplete. The District Attorney requests a transfer to Napa County. Pursuant to W&I Code §8103(f)(5), “a person who has requested a hearing from the superior court of his or her county of residence shall be given a hearing ... [however] the superior court *may* transfer the hearing to the county in which the person was evaluated or treated.” [Emphasis Added.] The District Attorney seeks a transfer because it “has no information with which to make an informed decision” as to whether to resist or support petitioner’s request to have his gun rights restored. This is insufficient. Before a transfer can be granted, there must be an affirmative showing that the receiving county in fact has greater access to the aforementioned records. Given that petitioner resides here in Tuolumne County, this county has the presumptively higher interest in whether this individual is allowed to possess firearms.