

Department 5 Probate Notes for Friday, March 29, 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.

NOTE: D.5 is dark this week. If immediate judicial intervention is necessary to avoid a miscarriage of justice, please contact D.2. Otherwise, feel free to file a brief declaration and the matter will be addressed upon the Commissioner's return.

8:30 a.m.

- 1. Estate of Stevenson (PR12381).** No appearance is necessary. The Petition for Letters of Administration is not ready for approval. Notice is to be published “with at least five days intervening between the first and last publication dates, not counting the publication dates.” §8121(a); TCSC Rule 5.05.0.b.2. Publication occurred on 02/13, 02/16, and 02/17 – which is an insufficient period. In addition, although petitioner is entitled to appointment (§8461(b)), since there are others with equal priority, Court prefers to have nominations in hand (§§ 8465, 8467). Court intends to set continued hearing for 05/03/24 at 8:30am, with supplemental papers due on or before 04/25/24. Re-publication will not be required, but petitioner must provide 15 days’ notice of the new hearing date to all persons identified on the DE-121 dtd 12/28/23.
- 2. Estate of Hale (PR6100).** No appearance is necessary. Pursuant to Probate Code §15403, all beneficiaries of an irrevocable trust may consent via express unanimity to seek modification of distributive provisions unless doing so would offend the trust’s material purpose. See *Boys & Girls Club or Petaluma v. Walsh* (2008) 169 Cal.App.4th 1049, 1057-1062; *Laycock v. Hammer* (2006) 141 Cal.App.4th 25, 30-31. A review of the Edith & Estle Hale Trust dtd 09/03/04, Para 6.D., reveals *three* income beneficiaries (Sabina J., Sabina R., Suzanne M.) and *at least one* residual beneficiary (Michelle G.). There is no mention of Sabina R. in the petition, let alone a joinder from her. There is also no explanation provided as to why the residual beneficiary should be receiving anything at this time. Court intends to set continued hearing for 05/03/24 at 8:30am, with supplemental papers due on or before 04/25/24.
- 3. Estate of Bettridge (PR12404).** No appearance is necessary. The Petition for Probate and Letters Testamentary is ready for approval. Although neither the instrument nor the attestations address decedent’s “sound mind” (§6100(a)), there is nothing indicating §6100.5 factors; thus the will is presumed valid (§6100) as subscribed via the DE-131. Court intends to enter the Order, issue the Letters, and set §8800 and §12200 review hearing dates. Since FL18243 was dismissed without prejudice on 01/26/24, petitioner’s §8800 should carefully navigate the nuances of §100. See *Estate of Peterson* (1994) 28 Cal.App.4th 1742.
- 4. Estate of McCue (PR12413).** No appearance is necessary. The Petition for Letters of Administration is not ready for approval. Although this Court has fundamental jurisdiction to proceed (§7052(b)), there is no indication in the petition if this is ancillary (§§ 12501, 12530). See *Smith v. Cimmet* (2011) 199 Cal.App.4th 1381, 1391-1394; *Conservatorship of Hume* (2006) 139 Cal.App.4th 393, 400. In addition, since lay persons often misunderstand the procedures in dissolution actions, notice should include Ms. Schneider (§1202). Court will consider bond waiver

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(§8571). Court intends to set continued hearing for 05/03/24 at 8:30am, with supplemental papers due on or before 04/25/24.

5. **Estate of Tarone (PR12407).** No appearance is necessary. The Petition for Probate and Letters Testamentary is not yet ready for approval. There is no proof of notice in the court file (§8110), which must include the alternate nominated executors. In addition, there is no permanent residence statement (§8573). Finally, although the will waives bond (§8481(a)(1)), petitioner must still request a bond waiver (§8571). Court intends to set continued hearing for 05/03/24 at 8:30am, with supplemental papers due on or before 04/25/24.
6. **Estate of Ramsgard (PR12135).** No appearance is necessary. This Court finds by a preponderance of the evidence that further administration is needed to bring this estate into a position of being closed. Court intends to set continued 12200 review hearing for 05/03/24 at 8:30am. If a petition for final distribution is on file prior thereto, failure to appear at the review hearing will have no adverse consequences. If no final petition is on file, petitioner shall file and serve TUO-PR-125 at least 10 calendar days prior to the review hearing.
7. **Estate of Cascio (PR12396).** No appearance is necessary. The Petition for Letters of Administration is not ready for approval. Notice is to be published “with at least five days intervening between the first and last publication dates, not counting the publication dates.” §8121(a); TCSC Rule 5.05.0.b.2. There is no proof of publication. Court intends to set continued hearing for 05/03/24 at 8:30am, with supplemental papers due on or before 04/25/24.

10:00 a.m.

8. **Conservatorship of Stevenson (PR11972).** No appearance is necessary. This was to be the hearing on the final accounting covering 09/01/23 through present day (until Letters are issued in PR12381). Although §2620 does not prescribe the time period in which the conservator is to “present the accounting of the assets of the estate of the conservatee to the court for settlement and allowance,” (nor does CRC 7.575 or TCSC Rule 5.17.1), the ordinary rule of thumb is four months. Counsel to advise. Court intends to set continued hearing for 05/03/24 at 10:00am, with supplemental papers due on or before 04/25/24.
9. **Conservatorship of Acosta (PR12114).** No appearance is necessary. This was to be the hearing on the first accounting covering 06/02/22 through 06/01/23. Although §2620 does not prescribe the time period in which the conservator is to “present the accounting of the assets of the estate of the conservatee to the court for settlement and allowance,” (nor does CRC 7.575 or TCSC Rule 5.17.1), the ordinary rule of thumb is four months. Court intends to set continued hearing for 05/03/24 at 10:00am, with supplemental papers due on or before 04/25/24.