

## Department 5 Probate Notes for Friday, April 12, 2024

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### 8:30 a.m.

1. **Conservatorship of LaKamp (PR10681).** No appearance is necessary. There is as yet no §1850 investigative report from which to deduce by clear and convincing evidence that the conservatorship remains necessary, that there are no less-restrictive options available, or that the conservator is acting in the conservatee's best interests. Without such a report, this Court intends to extend the conservatorship on a temporary basis, and to continue this matter to 05/31/24.
2. **Conservatorship of Tolhurst (PR11138).** No appearance is necessary. This was to be the hearing on the Fifth Accounting. However, there is no accounting on file. Without the accounting, this Court intends to continue this matter to 05/31/24.
3. **Estate of King (PR11586).** No appearance is necessary. There is still no §12200 report or Final Petition. Without either, this Court intends to continue this matter to 05/17/24, and hear an OSC re: §§ 12202-12205 at the same time.
4. **Estate of Herell (PR12109).** No appearance is necessary. There is still no §12200 report or Final Petition. Without either, this Court intends to continue this matter to 05/17/24, and hear an OSC re: §§ 12202-12205 at the same time.
5. **Estate of Schneider (PR12306).** No appearance is necessary. Although petitioner is required to specify the manner in which she intends to take title to the subject properties, this Court reasonably surmises that petitioner will take title as the sole and separate property of a single person. Court intends to enter the proposed order and await receipts before discharge.
6. **Estate of Briscoe (PR12302).** No appearance is necessary. This hearing was scheduled to confirm timely filing of the Inventory & Appraisal. However, due to the passage of time between the grant of the order for probate and the actual issuance of Letters, the 4-month period has yet to expire. Since there is no I&A on file yet, this Court intends to continue this matter to 05/31/24.
7. **Estate of Thorson (PR12190).** No appearance is necessary. This Court requested a revised order for entry, and is still waiting. This Court intends to continue this matter to 05/31/24.
8. **In re Riley Family Trust (PR11848).** On 09/14/20, noncontingent beneficiary J.R. filed petition for accounting. On 05/21/21 trustee L.B. filed accounting and petition to settle. On 07/14/21, J.R. filed objections to petition. Matter was continued by stipulation for two years. On 11/03/23, parties agreed to summary resolution (§9620); Court set briefing schedule. No briefs have been filed, and J.R. has gone MIA. On 01/26/24, Court issued OSC to J.R.'s counsel, with a deadline to respond. No response was provided. This Court indicated its intention to overrule objections, grant petition to settle, and thereafter dismiss petition for accounting. Parties then expressed a desire to mediate the issues. There is nothing filed since the last hearing. This Court is prepared, at this juncture, to dismiss the action in its entirety.

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**9. In re Farren Trust (PR12110).** On 03/05/10, Wayne Farrens established for himself a revocable trust. During his lifetime, he funded the trust with, among other items, real property located in El Dorado County, Placer County, Siskiyou County, and Tuolumne County. According to the trust instrument, upon the settlor's passing, the trust assets were to be distributed equally to each of his five children: Tonya, Farrah, Melody, Wayne, Sierra (Arlo). On 09/25/15, settlor Wayne died. Tonya accepted the role as successor trustee, and has held that role ever since. Farrah is the petitioner here, concerned about Tonya's handling of the administration. On 10/12/18, petitioner requested an accounting. That request was not responded to. According to Tonya, a full accounting was provided to all beneficiaries on 09/14/18. On 02/09/22, counsel for petitioner asked Tonya to resign as trustee so that petitioner could take over. Tonya declined. On 03/11/22, Tonya and petitioner exchanged emails expressing mutual frustration at how long it was taking to close the trust administration. Tonya pointed out that the few tasks delegated to petitioner had still not been completed. On 05/09/22, this petition was commenced. At issue is Tonya's alleged acquiescence in the foreclosure (and thus loss) of three of the four properties held in trust. Those properties include:

- A. Settlor's residence in Placer County (079-021-034-000). This was a modest-sized manufactured home sitting on 1.5 acres in Placerville. According to Tonya, settlor purposefully fell into arrears on the Bank of America loan because petitioner gave him faulty advice, to wit: default on your loan and you will be eligible for a loan modification. Although Bank of America was allegedly talking with Tonya, the foreclosure sale occurred just days after settlor's passing. It is unknown what, if any, equity the trust had in the property, but according to Zillow, it could not have been much (if anything).
- B. Vacant land in El Dorado County (APN 011-110-23-100). The trust owned a 1/3 interest in a 60-acre parcel. According to Tonya, the other two "partners" had refused to cover any of the property taxes, or cure any of the numerous citations issued. According to Tonya, settlor made it known that he intended to stop paying on the property and allow it to go to a lien foreclosure, which occurred in August of 2020. The trust incurred no cost, but lost its 1/3 interest in the property (whatever that might have been).
- C. Vacant land in Siskiyou County (APN 025-370-260). This is an 80-acre parcel of "timber" land which the trust eventually acquired a 100% interest in after settlor's business partner refused to honor debts. The property was listed for sale at varying amounts, lastly at \$75,000, but there were no takers because it was landlocked, with no accessible roads. Upon inquiry, it was determined that to make use of the property, the trust would have to spend close to \$40,000. There was a lien against the property for \$21,000, plus taxes and such. Tonya opined that the property had negative equity, and therefore allowed it to be foreclosed upon. Farrah contends that the accounting only listed this as a 50% interest, when it should have been listed as 100%. Farrah also contends that she offered to rescue this property with a no-interest loan, something petitioner ignored.

Farrah has identified other assets that are not listed in the accounting, including guns/ammo, and a life insurance policy. Farrah takes issues with small line items in the accounting, such as car

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insurance and cleaning costs. Farrah also takes issue with the fact that the 1967 Chevelle has not been liquidated or distributed. This Court found on 10/28/22 that Tonya was delinquent in her obligations to provide the beneficiaries proper accountings for the trust. She was ordered to provide an accounting to cover the period 06/25/15 → 10/28/22 by 12/01/22. Although petitioner was tardy, she did file on 12/09/22 a substantive response to the petition and a facially (if not substantially) compliant accounting. Pursuant to Probate Code §15642(b), a court may remove a trustee from office where (as relevant herein) the trustee: has committed a breach of the trust; is insolvent or otherwise unfit to administer the trust; fails or declines to act; is substantially unable to manage the trust's financial resources or is otherwise substantially unable to execute properly the duties of the office; is substantially unable to resist fraud or undue influence. The court is also empowered to remove a trustee "for other good cause." If the court finds that the petition for removal was filed in bad faith and that removal would be contrary to the settlor's intent, the court may order petitioner to bear all or any part of the costs of the proceeding, including reasonable attorney's fees. Although the evidence does not clearly show a breach of fiduciary duty, a full hearing will be required as Farrah still wants this Court to rule on that portion of the petition seeking Tonya's removal. Best this Court can tell, there is nothing substantive left of this petition, and this Court is not obligated to micro-manage ongoing administration of a trust. This Court intends to dismiss the entire petition.

### 10:00 a.m.

10. **In re Claim of ASH (PR12216).** This was to be a review hearing to confirm payment for all creditor invoices. Nothing has been filed. Counsel to advise.
11. **Guardianship of Mellott (PR11905).** This matter must await closure of the courtroom. §7884. A court investigator has been appointed, and a report received. §§ 7850-7851. There is no proof of service or excuse therefor. §§ 7881(a), 7882. Counsel is ordinarily appointed for the petitioner (§7861), and must be appointed for the affected parent(s) if indigent (§7862). The preliminary §1516.5 conditions appear to have been satisfied, except that there are no admissible (verified) facts showing §3042, §7822, §7825, or §1516.5(a)(3). See *In re Charlotte D.* (2009) 45 Cal.4th 1140, 1149; *Adoption of Myah M.* (2011) 201 Cal.App.4th 1518, 1538-1539; *In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1393. Petitioner was ordered to effectuate service on bio mom and submit a supplement to the petition. Nothing has been filed since the last hearing.
12. **Guardianship of Wondra (PR12399).** This Court, having received and reviewed the investigative report, finds by a preponderance of the evidence that a guardianship is necessary and convenient, that minor child has been effectively abandoned by biological parents, and that the petitioners are appropriate candidates to serve as guardians for this minor. Given that this Court is still missing a POS on bio mother and a completed GC-110/248 by one of the petitioners, only a temporary in favor of Judith is granted at this time. Date for permanency will be set at the hearing.
13. **Guardianship of Brinkman (PR10808).** Court intends to refer the parties to mediation, and to interview both minors in chambers, before reaching the merits of the guardians' RFO to modify the

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visitation schedule. Court also needs to ascertain from bio parents whether either is seeking as part of the response to the RFO an order terminating the guardianship. Parties to discuss. Guardianship to remain for the time being, and the evidence before this Court at present shows by a preponderance thereof that the guardianship remains convenient and that the guardians are serving the wards' needs. Court intends to set an annual review date on the guardianship.

14. **Guardianship of Owsley (PR10710).** Ward has reached the age of majority. No grounds have been proffered to extend the guardianship. As such, the guardianship terminates by operation of law, and the matter is dismissed.
15. **Conservatorship of Aydelott (PR10450).** No appearance is necessary, as the accounting has been approved. Court to set biennial accounting review hearing.
16. **Conservatorship of Valdez (PR10308).** No appearance is necessary. There is as yet no §1850 investigative report from which to deduce by clear and convincing evidence that the conservatorship remains necessary, that there are no less-restrictive options available, or that the conservator is acting in the conservatee's best interests. Without such a report, this Court intends to extend the conservatorship on a temporary basis, and to continue this matter to 05/03/24 to align with the pending petition for interim legal fees.

**1:30 p.m.**

17. **In re Solo (PR12408).** Applicant to confirm direct filing of application (§8103(f)(3)) and submission of required releases (§8103(f)(3)). District Attorney to confirm status of DOJ report (§8103(f)(5)) and need for statutory continuance (§8103(f)(5)). Court investigator to be appointed to marshal evidence related to custody/admission, prior criminal history, and other information pertinent to whether applicant would not be likely to use firearms in a safe and lawful manner (§8103(f)(6)).
18. **Jones v. Vogt (CV65525).** Settlement Conference.