

## Department 5 Probate Notes for Friday, April 18, 2025

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**8:30 a.m.**

1. **Conservatorship of Heiny (PR11780).** No appearance is necessary. This Court, having received and reviewed the court's investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory requirements for a general conservatorship, that a general conservatorship remains the least restrictive alternative for the conservatee's protection, and that the conservator continues to serve the conservatee's best interests. Court intends to set the annual review hearing date.
2. **Conservatorship of Martin (PR11890).** No appearance is necessary. This Court, having received and reviewed the court's investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory requirements for a general conservatorship, that a general conservatorship remains the least restrictive alternative for the conservatee's protection, and that the conservator continues to serve the conservatee's best interests. Court intends to set the annual review hearing date.
3. **Conservatorship of Mansfield (PR11576).** This Court, having received and reviewed the court's investigative report, is unable to find by clear and convincing evidence that the conservatee still meets the statutory requirements for any conservatorship, let alone a general one. The conservatee appears to be quite high functioning, and is due for a comprehensive evaluation by VMRC. Court would like to hear from both the conservatee and the conservator, as well as VMRC. \
4. **Estate of Ruiz (PR12612).** Before the Court this day is a petition to transfer APN 039-010-032-000 from decedent to her two surviving next of kin. The petition cannot be granted for two reasons: the petition includes no evidence from which to conclude that the property is presently held in the decedent's name; and there is no evidence provided to show that said parcel was the decedent's primary residence at the time of her passing. See §13152(a). Supplemental information will be needed to ready this petition for approval.
5. **Estate of Ferles (PR12608).** Before the Court this day is a petition for probate and Letters of Administration brought forth by one of decedent's two adult sons. Notice has been provided, as have bond waivers by both. The only item missing is a nomination from John of his brother to serve as administrator, which is a soft requirement imposed by this Court to avoid any disagreements down the road. Assuming the nomination can be secured, the petition can be approved and §§ 8800/12200 dates set.
6. **Estate of Bain (PR12032).** Petitioner to advise regarding status of home sale and whether final petition will be forthcoming.

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7. **In re Berchtold Trust (PR12607).** Before the Court this day is an initial hearing on a trust petition to compel reporting/accounting, with possible suspension. At issue is trust administration for the better part of a decade by only one of two co-trustees, notwithstanding §§ 15620 and 16402(b). Court awaits a response from the alleged “de facto sole trustee” (§1043) and proposals for discovery (§17201.1) and resolution. Court intends to discuss with the parties the value of a limited-purpose receiver to prepare a neutral inventory and accounting.
8. **In re Ylimaki Trust (PR12370).** Before the Court this day are two distinct requests. First, there is an objection filed to the First Accounting for the subject trust, which the Court notes was never filed with the Court or the subject of any petition for approval under §§ 1064 and 17200(b)(5). The objection is noted for its timeliness, but seems otherwise premature in terms of any substantive determination without knowing if the trustee stands on his existing (unfiled) accounting as is. See, e.g., §17211 and *Dunlap v. Mayer* (2021) 63 Cal.App.5th 419, 426. Separately, petitioner is seeking an order to suspend the trustee of a related trust for alleged transgressions. Although the Ylimaki trust is alleged to be related in some form or fashion to the Linda Rae Norman Special Needs Trust, a petition concerning the affairs of this other trust must be commenced as a separate action. Separation is particularly important here because misuse of property within a special needs trust could have white collar fraud implications.
9. **In re Matz Trust (PR12569).** This is a petition involving the validity of a trust, accountings, elder abuse, removal and surcharge – to name a few central concerns. The Court file still does not contain any proof of service on any interested or affected persons, and there have been a few requests to continue this initial hearing date. Court awaits a response from the respondent (§1043) and proposals for discovery (§17201.1) and resolution. Court intends to discuss with the parties the value of a limited-purpose receiver to prepare a neutral inventory and accounting.
10. **Estate of Holland (PR12327).** Court has received and started to review respondent’s status report regarding unresolved discovery issues and intends to complete that review soon. Court wishes to address issues raised in respondent’s recently-filed MSJ, even though the date set for hearing does not comport with CCP §437c and Probate Code §1000.
11. **In re Cuneo’s Cameo Trust (PR12613).** Before the Court this day is a petition for instructions on how to treat what amounts to a partially-lapsed gift in a trust instrument. When the trust instrument was created, the settlor reportedly understood that the trust held title to membership interests in “3471 California Street LLC” – which itself held an

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ownership interest in real property located in San Francisco. The settlor directed that the said membership interest was to be distributed in equal shares as follows:

- Raul for life, remainder to Brock;
- Jamie for life, remainder to Ayva;
- Ed for life, remainder to Bryant;
- ~~Westley~~ Susan for life;
- Lance for life.

Based on the distributive directive in Art. II Para D.2., each of the beneficiaries (Raul/Brock, Jamie/Ayva, Ed/Bryant, Susan, Lance) was to receive 20% of the membership interests associated with 3471 California Street LLC “declared at the time of the trustor’s death” – whatever those membership interests may have been. For example, if the membership held title to real property, and that real property had generated net income, membership dividends then owing to the settlor were to have been split five ways assuming Susan and Lance were then-living when the settlor passed. Since it appears from the POS that Susan and Lance did survive, there is no need to wade into the more complex question of whether the absence of a designated remainderman for their shares would pass naturally, increase the shares of the others, or push their shares into the Para G residuary.

According to the petition, after the settlor passed away, a proceeding was commenced in Mariposa County which appears to have effectuated a *Heggstad* transfer of the LLC into the trust. This Court will need to see that court order. Either way, the need for instruction here is unclear. Since the LLC was terminated in 2020, Mariposa likely did not put an LLC into the trust. It must have been either a parcel of real property, or the cash equivalent. Identifying the asset will help answer the question what instruction is needed. If, for example, the asset is a parcel of real property, and that parcel was an asset of the LLC, it is plain to see that the beneficiaries (Raul/Brock, Jamie/Ayva, Ed/Bryant, Susan, Lance) are entitled to 20% of that interest “declared at the time of the trustor’s death” (ie, 11/30/23). However, that is not what they want, and not what the petitioner is asking about. Instead, it seems petitioner is asking if he should disregard the first temporal condition and direct to the beneficiaries (Raul/Brock, Jamie/Ayva, Ed/Bryant, Susan, Lance) 20% of that parcel (or its cash value) from 11/30/23 forward. But what about the second temporal condition? Art II Para D.2. contains *two* temporal conditions: first, that the beneficiaries receive a value “declared at the time of decedent’s passing” (rather than a value going forward); and second Raul, Jamie, Ed, Susan and Lance were never to have more than a life estate in whatever they were to get from the LLC asset – so a “20% interest in real property” could only be a 20% interest in a joint tenancy with right of survivorship, but that would remove the remainderman’s interest (ie, Brock, Ayva, and Bryant). The only way to effectuate decedent’s *actual* distributive plan is to create an LLC with 60 member units, but petitioner

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is not asking for permission to do this. Petitioner has not provided this Court with any information about the LLC membership, the asset we are speaking of, or how future interests are going to be protected without some separate business entity. Parties to discuss.

### 10:00 a.m.

12. **Guardianship of Jones (PR10409).** 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 the guardianship remains necessary/convenient, and that the guardians continue to serve the ward's best interests. Court intends to set an annual review date to align with the ward aging out next year.
13. **Conservatorship of Ferreira (PR12354).** Court has not yet received the annual investigative report in this matter, which recently transferred in from Alameda County (where it was not subject to regular review).
14. **Conservatorship of McClintock-Cole (PR12057).** No appearance is necessary. This Court, having received and reviewed the court's investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory requirements for a general conservatorship of the person and estate, that a general conservatorship remains the least restrictive alternative for the conservatee's protection, and that the conservator continues to serve the conservatee's best interests. The Court continues to have concern regarding the conservatee's next of kin refusing to assist in any meaningful way, but wishes to express its appreciation to the public guardian for its service. Court intends to set the annual review hearing date.
15. **Guardianship of Means (PR11889).** 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 the guardianship remains necessary/convenient, and that the guardian continues to serve the ward's best interests (even though Para 2 is blank). Court intends to set an annual review date.
16. **Guardianship of Renteria (PR10727).** 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 the guardianship remains necessary/convenient, and that the guardians continue to serve the ward's best interests. Court intends to set an annual review date.
17. **Guardianship of Nulph (PR10997).** Although this matter appears on calendar, the ward has already aged out, and this guardianship terminated by operation of law.

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18. **Guardianship of Alexander (PR12459).** This is a petition by concerned family members (paternal aunt and spouse) to establish a guardianship for a minor child over the strong objection from both biological parents. Since the proposed guardians never assumed the role of *de facto* parent status, Family Code §3041 requires them to show by clear and convincing evidence that leaving custody in the hands of the biological parents would be detrimental to the child and that creating the guardianship is required to serve the best interest of the child. Although both biological parents face a myriad of criminal charges (see CRM72969, CRM72269, CRM74538, CRM74626, and CRM74537) and have struggled of late with substances, employment, housing, cell service, timely attendance at court proceedings, and the like, there is as yet insufficient evidence of unfitness to warrant an evidentiary hearing on the petition, let alone any temporary orders establishing a guardianship. Most critical here is the fact that the minor child has enjoyed high marks at school in terms of regular attendance and performance, which is attributable to the efforts of her biological parents to succeed where it matters most. The updated investigative report confirms that the child has been regularly attending school, in clean clothes, and with proper hygiene. The latest issue appears to be that the parents are no longer receptive to extended family input, but that is the Constitutional right of parents to control contacts. The parents have made strong strides toward a stable home for their child, but the parents are currently occupying a residence that is not theirs to occupy, and may be the subject of an upcoming probate proceeding. Mother was just arrested under troubling circumstances. Family members have been instructed to seek assistance from the FLF regarding extended family visitation rights. Court will consider appointing minor's counsel if petitioners insist on pursuing the matter further (noting Probate Code §1611).
19. **Guardianship of Flores (PR12055).** 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 the guardianship remains necessary/convenient, and that the guardian continues to serve the ward's best interests (even though Para 1.e. is blank). Court intends to set an annual review date to align with ward's aging out.
20. **Guardianship of Garner (PR12361).** This is a paternal grandparent guardianship involving one child, established via consent, and the subject of numerous court hearings over the past year. Before the Court this day remain the following matters: (a) Guardians' TECO filed 12/11/24 seeking an emergency order suspending bio dad's vists until further order; (b) Guardians' RFO filed 12/11/24 to change the visitation schedule agreed to with bio dad as part of the 09/13/24 global settlement; (c) Bio dad's second petition to terminate guardianship, filed 12/11/24; (d) Bio dad's third petition to terminate guardianship, filed 12/16/24; (e) Guardians' TECO filed 01/03/25 seeking an emergency order suspending bio dad's vists based on DV with new wife; and (f) Bio dad's OSC re Contempt filed against

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guardians for allegedly failing to facilitate agreed-upon visits, filed 01/20/25. The Court intends to re-interview the child, utilizing a vetted list of questions provided by the parties, and to secure a formal recommendation from minor's counsel regarding the petition to terminate. Court interviewed the ward in the presence of counsel and confirmed that ward wishes to spend considerable time with all interested parties, and would likely agree to live with whomever agreed to guarantee her that flexibility. A full evidentiary hearing is already on calendar for next month.

- 21. Conservatorship of Garness (PR10012).** This case involves an LPS conservatorship first established in 2006, and re-established annually every year thereafter. Conservatee is 46 years of age, and in good physical health save for mild tardive dyskinesia. He has spent the better part of the last decade living at the Merced Behavioral Center, a secured 96-bed skilled nursing and mental health facility located in the heart of the San Joaquin Valley. He suffers from chronic, and seemingly unremitting, schizophrenia.

Before the Court this day is a Petition for Re-Establishment and Reappointment (see §5361). To re-establish an LPS conservatorship, County must first prove beyond a reasonable doubt that conservatee is "gravely disabled," ie incapacitated or rendered unable to carry out the transactions necessary for survival, as a result of a mental health disorder or severe diagnosed substance-related disorder. Thereafter, County must prove by clear and convincing evidence that (1) as a result of said disability, the conservatee is unable to properly provide for his/her personal needs for physical health, food, clothing, shelter, personal safety (the ability of one to survive safely in the community without involuntary detention or treatment) or necessary medical care (care that a medical provider determines to be necessary to prevent serious deterioration of an existing physical medical condition); (2) that as a result of said disability, the conservatee is substantially unable to manage his/her own financial resources or to resist fraud or undue influence; and (3) that there are no family, friends or others who are voluntarily willing and able to help provide for the person's basic personal needs. See Probate Code §§ 1801, 5008, 5350. In support of the requisite findings, County offered reports from Drs. Timothy Johnson and Jonathan Harry, both of whom opined that conservatee remains gravely disabled and unable to provide for his personal needs or manage finances without focused 24/7 care by others. See *Conservatorship of K.W.* (2017) 13 Cal.App.5th 1274, 1285-1286. County Counsel requested the appointment of counsel for conservatee, who qualifies for conflict counsel. Counsel to be appointed, and court to inquire of any time (§5350(d)) and/or jury (§1828) waivers. Court to voir dire conservatee regarding his rights and desire to be present and for a jury. See *Conservatorship of Joanne R.* (2021) 72 Cal.App.5th 1009, 1016-1020; *Conservatorship of C.O.* (2021) 71 Cal.App.5th 894, 917-919.

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**1:30 p.m.**

**22. Marriage of Carter (FL18048).** Off-calendar

**23. Petition of AD (CV66635).** Confidential petition to change name.

**24. Marriage of Radetich (FL18672).** Before the Court this day is a specially-set hearing, pursuant to CRC 3.1590, to address the concerns associated with this Court's Tentative Decision and Petitioner's recent RFO on OST, :

- Proof of actual earnings to establish basis for temporary spousal support, initially proposed to be \$2,500/month:
  - (1) the absence of tax returns filed by the parties jointly, individually, or in a representative capacity for the construction business, since 2021 (§3552)
  - (2) federal and state 10-yr tax rolls by tax ID number, showing no filings;
  - (3) Is respondent responsible for the absence of tax filings, and if so should she be estopped from claiming annual community earnings in excess of \$14,000?
  - (4) Tax return for Yr-2024 (due for filing early this week).
  - (5) Audited profit/loss statements for Radetich Construction 2022-2024
- Selection of listing agent for marital residence;
- Return of Petitioner's Ford F250 now that the Expedition is out of the shop;
- §2030 fees in the amount of \$5,000 awarded to Respondent;
- §2104/2107 sanctions in the amount of \$2,000 awarded to Respondent.

**25. Marriage of Sutton (FL5534).** Nonconfidential request to restore former name.