

Department 5 Probate Notes for Friday, April 26, 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.

8:30 a.m.

1. **Conservatorship of B. Kohler-Crowe (PR9006).** This was to be the hearing on the 12th accounting, covering the period 01/01/22 – 12/31/23. 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. The accounting is tardy. Petitioner to advise.
2. **Estate of Welsh (PR12217).** Petitioner was ordered to have on file an updated §12200 status report, and as yet no report appears in the court file. Although this Court is aware of pending litigation in Orange County, no information about that proceeding has been provided to this Court in order to assess how much more administrative time is required. Petitioner to advise.
3. **Estate of Neubaumer (PR11671).** The Petition for Allowance and Distribution is still not ready for approval. Counsel was ordered to file an updated CRC 7.702-7.703 declaration supporting the request for extraordinary compensation by 04/18/24 – and best this Court can tell no declaration is yet in the file. The proposed reimbursement for litigation costs is quite high, and not supported by the requisite declaration of necessity (§11004 and TCSC 5.22.0). Finally, given that the only assets herein are real property interests (see Para 32 and CRC 7.651), there must be an explanation as to how fees are being covered. See §10831, and *Estate of Wong* (2012) 207 Cal.App.4th 366, 375.
4. **Estate of Moreno (PR12151).** Based on the resolution between petition and creditor at the last hearing, this Court indicated that the Petition for Allowance and Distribution would be approved. There was no CRC 7.702-7.703 declaration supporting the request for extraordinary compensation, and counsel’s request for \$5,737.03 is outside the allowable statutory amount. See §10810, and *Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1446. On 03/15/24, this Court issued an OAJR that counsel for petitioner submit a revised order for final distribution. At present, there is no proposed order in the file.
5. **Estate of Bridge (PR11944).** This was to be a §12200 review hearing, but there is nothing on file for this Court to review or consider. Since the objecting petition has been resolved fully, are the parties ready to proceed with a petition to approve and distribute?
6. **Estate of Bellinger (PR12414).** Parties to address options for resolution of competing testamentary instruments. No publication yet for competing petition.
7. **Estate of Ward (PR12198).** No appearance is necessary. Although a further explanation is warranted given the delay since Letters were issued, the matter will be continued to 05/17/24 at 8:30 a.m. to align with counsel’s motion to withdraw.
8. **Estate of Bain (PR12032).** No appearance is necessary. There is active litigation pending between the parties and impacting the ability to close this administration (CV64737). Based upon this

Department 5 Probate Notes for Friday, April 26, 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.

Court's review of that case file, it would appear that the matter will finally proceed to trial next month. As such, this Court intends to grant a further §12201 extension through July.

9. **Guardianship of Klaverweiden (PR11794).** This was to be the hearing on the 3rd accounting. 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 ward 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. The accounting is tardy. Petitioner to advise.
10. **Guardianship of DeLacy (PR10975).** This was to be the hearing on the 6th accounting. 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 ward 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. The accounting is tardy. Petitioner to advise.
11. **In re Hardin Trust (PR12351).** On 10/30/23, James Hardin filed a petition to remedy alleged transgressions by co-trustees Ariana Hardin Matschullat and Rowena Hardin Garon arising out of or relating to the ongoing administration of the Alice C. Hardin Trust. On 12/13/23, said trustees filed a petition for settlement of account and approval of fees. On 01/03/24, said trustees filed a response and objection to the petition to remedy alleged transgressions, including affirmative defenses thereto and a prayer for affirmative relief in the form of fees/costs. On 02/13/24, James Hardin filed an objection to the petition for settlement of account and approval of fees. At the most recent hearing, some of the parties indicated that these disputes can be resolved using the summary procedures in §§ 1022 and 9620, with briefing consistent with CCP §§ 437c, 1010, 1005(b), 1005.5, and CRC 3.1306. All parties agreed that there were no factual dispute involving a question of law for which a right to jury might attach. See, e.g., §§ 825, 17006. Counsel for Hardin indicated that additional filings were forthcoming, but a review of the court file fails to reveal any interim filings. If there is no agreement regarding summary disposition, the matter must be set for a bench trial and all witness testimony will have to be live unless the parties secure stipulations to the contrary.
12. **In re Hahn Trust (PR12384).** The *Heggstad* Petition is still not ready for approval. Petitioner seeks an order declaring APN 036-082-008 an asset of the subject trust dtd 11/11/10. A court may make the requested transfer under §856 if the settlor *presently owns* the subject property, the settlor created a trust with him/herself as trustor, and there exists sufficient evidence from which to conclude that the settlor intended said property to be held in trust. See *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. Based on the trust instrument and the pour-over will, there is sufficient evidence from which to conclude that the settlor likely intended for his property to be held in trust. The more pressing question here is whether the settlor presently owns the subject property. Counsel is of the opinion that no such evidence is required unless there is a competing claim to the property, but given that notice is only required to interested parties (as opposed to say publication to the world at large), there is no reason to exalt the absence of opposition to anything more than mere

Department 5 Probate Notes for Friday, April 26, 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.

fortuity. This is either an §850(a)(2) [decedent died holding title to real property] or §850(a)(3) [trustee claims real property held by another] petition, and in either instance one of the essential elements is proof that someone is (present tense) holding title to real property that ought to be in the trust. Obviously, proof of this is required. Moreover, since an order permitting the transfer of the asset to the trust is effectively final (see §857), it is not unreasonable for a trial court to request proof of all the elements before potentially clouding title. The only evidence submitted with the petition regarding decedent's *ownership* interest in the subject property is petitioner's verification, but verified pleadings are not proof without an affirmative showing of personal knowledge – which this petition lacks. See Evid. Code §702; *Forest Lawn Memorial-Park Ass'n v. Superior Court* (2021) 70 Cal.App.5th 1, 8-12. There are no copies of grant deeds, preliminary title reports, tax statements, anything that is normally filed with an §850 petition. Petitioner did attach decedent's death certificate, which lists the subject property as his residence at the time of his passing, but that is not proof of *ownership*. Court intends to continue the hearing and set another filing deadline.

- 13. Petition of Bayers (PR12356).** The Petition to Determine Succession remains 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 was ordered to file and serve supplemental papers before 04/18/24 or risk dismissal of the petition. Best this Court can tell, nothing has been filed despite two prior warnings (01/05/24, 03/05/24).

10:00 a.m.

- 14. Conservatorship of Heard (PR9661).** No appearance is necessary. The Court, having received and reviewed the 10th accounting, confirms that notice has been provided in accordance with law, the accounting shall be allowed as reasonable and correct, and the fees sought for petitioner and counsel are reasonable. Court intends to sign the order and set a biennial accounting review date.
- 15. Conservatorship of Barela (PR11388).** Court awaiting status on whether Joaquin Garman will voluntarily resign. Nothing has been filed indicating either way.
- 16. Conservatorship of Martinez (PR9787).** This was to be the hearing on the 8th accounting, covering the period 01/01/22 – 12/31/23. 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. This accounting is tardy. Petitioner to advise.
- 17. Conservatorship of Mathis (PR11891).** Review hearing to determine propriety of limited conservatorship in lieu of general. Nothing new filed since last hearing.
- 18. Conservatorship of Elekes (PR11746).** This was to be the hearing on the 2nd and final accounting, covering the period 02/16/23 – 07/13/23, and a second accounting for post-mortem activity

Department 5 Probate Notes for Friday, April 26, 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.

thereafter. Although §§ 2620 and 2630-2631 do 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. The accounting is tardy. Petitioner to advise.

19. **Guardianship of Webb (PR11467).** There is still no GC-251 on file. If petitioner is not present to respond, Court will appoint investigator to track her down at her expense.
20. **Guardianship of Clement (PR11515).** No appearance is necessary. This Court, having received and reviewed the Sixth Accounting, confirms that notice has been provided in accordance with law, the accounting shall be allowed as reasonable and correct, and the proposed adjustment to the bond is approved. Court intends to sign the order and set an annual accounting review date.
21. **Guardianship of Okelrud (PR12397).** Related to FL10299. The Court, having reviewed the petition for temporary guardianship, finds by a preponderance of the evidence that a guardianship is necessary/convenient and that the petitioner has been meeting the ward’s needs as de facto parent. Parties to update Court on status of appointment of counsel and maternal objection. See §3041.
22. **Guardianship of Radabaugh (PR12444).** Related to FL17905. There are no parental consents or nominations. Court will appoint court investigator and minor’s counsel. Court will consider temporary appointment depending on ward’s residence and circumstances.
23. **Guardianship of Cox (PR12392).** Court awaiting word on whether petitioner proceeded to retain counsel. Court considering waiving for good cause appointment of court investigator (§1513), and weighing necessity of minor’s counsel (§1470).
24. **Guardianship of Garner (PR12361).** Related to FL17944. Court awaiting further report from investigator. Court has reviewed the recent filings, and is prepared to proceed.
25. **Conservatorship of Garness (PR10012).** No appearance is necessary. The Court, having received and reviewed the 15th accounting, confirms that notice has been provided in accordance with law, the accounting shall be allowed as reasonable and correct, and the fees sought for petitioner and counsel are reasonable. Court intends to sign the order and set an annual accounting review date.

1:30 p.m.

26. **Glover v. Gookin (FL17466).** Settlement Conference.
27. **Petition of Jacobson (CV65890).** Petition to change name; confirm no §1275.5 concerns.