

Department 5 Probate Notes for Friday, May 16, 2025

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8:30 a.m.

1. **Conservatorship of Tolhurst (PR11138).** Before the Court this day is an ex parte application to grant exclusive rights to list and sell the conservatee's real property. Since doing so keeps the conservatorship open and subject to management, without the benefit of any step-up in basis, this Court inquired whether proceeding via H&S §103450 and *In re Starr* (2002) 104 Cal.App.4th 487, was an option. Counsel to advise.
2. **Claim of B.H. (PR12596).** No appearance is necessary, as the requested order has been submitted, signed, and entered.
3. **Claim of J.H. (PR12597).** No appearance is necessary, as the requested order has been submitted, signed, and entered.
4. **Estate of Phelps (PR12617).** No appearance is necessary. This is the natural sequel to PR12340, in which decedent's ex-wife and only child secured from this Court an order establishing decedent's date and time of death after he went missing near Donnell Vista in 2016. This Court was pleased to bring much-needed closure to the family. Before the Court this day is the son's petition for letters of administration, which this Court is for the singular purpose of accessing the Umpqua accounts referenced in that earlier action. There are no issues with the petition, and this Court intends to provide §8800 and 12200 review dates.
5. **Estate of Herell (PR12109).** This seemingly innocuous intestate petition identifying one asset appraised at under \$200,000 was released into the wild exactly three years ago. It has been held hostage now for half of that time due to an escrow error following the sale of that asset in the approximate amount of \$16,174.00. This will be the 5th review hearing that counsel and Court have attended together, jointly wondering if today might be the day that a petition for final distribution can be filed? In the immortal words of Brian Wilson and Mike Love, "wouldn't it be nice if we could wake up" and put this case to bed?
6. **Estate of Myers-Bridle (PR12133).** No appearance is necessary. This was to be the review hearing to confirm filing of a final inventory and appraisal (§8800), which the Court can see has already been completed.
7. **Estate of Benoit (PR12133).** Although this was scheduled to be another §12200 review hearing, Counsel succeeded in securing another individual willing to succeed as successor administrator in light of Ms. Benoit's obvious abdication of her fiduciary duty as the current administrator. As a courtesy to Ms. Benoit, given her recent health issues, this Court has

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elected to proceed as if she has resigned from her position under §8520 and proceeds to appoint under §8522 Ms. Jamison, who qualifies under §§ 8461, 8465, and 8468. However, Ms. Jamison will need to secure either a bond for her service, or a bond waiver, before the Letters may actually issue. See §§ 8480, 8481. Thus, until that time Ms. Benoit's resignation is not yet effective.

8. **Estate of Osterholm (PR12534).** No appearance is necessary. This was to be the review hearing to confirm filing of a final inventory and appraisal (§8800), which the Court can see has already been completed.
9. **Estate of Johnson (PR12510).** No appearance is necessary, as the requested order has been submitted, signed, and entered.
10. **Estate of Correa (PR12097).** This Court previously, and to some degree begrudgingly, authorized the administrator to complete an insider sale of decedent's residence upon terms and conditions which this Court understood were essentially completed, and which this Court understood would be finalized in due course. A review of the court file reveals nothing but an assignment from Gary to Probate Advance, suggesting to this Court that (1) the sale did not close and (2) perhaps Gary thinks it never will. If the transaction is not to be completed in a few weeks, the contract will need to be cancelled and the property will need to be re-listed on the open market. Otherwise, the parties will need to explain what delays are occurring and why.
11. **Estate of Mijares (PR12619).** Before the Court this day is a petition to transfer real property to decedent's spouse, or more particularly to decedent's surviving spouse's estate. That by-pass is codified at Probate Code §§ 13500 and 13650, which collectively provide that "when a husband or wife dies intestate leaving property that passes to the surviving spouse under Section 6401, the property passes to the survivor" provided that "all or a part of the estate is property passing to the surviving spouse" – among other statutory conditions. The petition is not ready for approval, for a number of reasons.

First, pursuant to §13651(a)(1), the petition must include "the facts necessary to determine the county in which the estate of the deceased spouse may be administered." There are no facts connecting this petition to Tuolumne County other than box 4.a., and no basis from which to conclude that petitioner would know this information from 25 years ago.

Second, pursuant to §13651(a)(2), the petition must include "a description of the property of the deceased spouse." That is further defined as "property that becomes part of the decedent's estate on the decedent's death" (§13055) – which is a cumbersome way of saying

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proof that decedent actually owned the property when he died. The grant deed from 1990 shows that decedent owned the property in 1990, not when he died in 2000.

Third, since a surviving spouse technically has the right to dispose of community property without a transfer deed (see §13540 and *Estate of Bonanno* (2008) 165 Cal.App.4th 7, 19-20), and transfer orders hereunder are conclusive (§13657), there must be evidence supporting “the facts upon which the petitioner bases the allegation that all or a part of the estate of the deceased spouse is property passing to the surviving spouse.” §13651(a)(3). The petition is sufficient to show Alicia community property interest, but it must also show that she still had an ownership interest in the real property at the time of her passing in late 2024.

Court intends to continue the matter unless Counsel can marshal the needed information in time for the hearing.

12. **Estate of Anderson (PR12505).** No appearance is necessary. This was to be the review hearing to confirm filing of a final inventory and appraisal (§8800), which the Court can see has already been completed.
13. **Estate of Larson (PR12422).** Before the Court this day was to be the annual review hearing to determine the status of the administration (§12200). A review of the court file reveals no petition for distribution, and no status report. Counsel to advise.
14. **Claim of TS (PR12600).** This is a petition to approve a proposed compromise and release of a personal injury claim belonging to a minor. The first concern is standing. There are only three persons authorized by law to compromise a minor’s injury claim: (1) the minor’s legal guardian (Prob. Code §§ 2401, 2451, 2462); (2) the minor’s appointed guardian ad litem (CCP §372(a)(2)); or (3) the parent having care, custody, or control of the minor (Prob. Code §3500). The petition does not provide any information regarding the minor’s father, or whether the minor’s mother has co-equal (if not majority) care, custody, or control. Mother’s GAL application, however, is sufficient. As for the merit, a petition to compromise must include a full disclosure of all information that has any bearing on the reasonableness of the settlement reached. See CRC 7.950; in accord, *Chui* at 903-904; *Pearson v. Superior Court* (2012) 202 Cal.App.4th 1333, 1337; *Espericueta v. Shewry* (2008) 164 Cal.App.4th 615, 627. This is similar to the “ballpark” test for good faith settlements. Given that the minor did not sustain any treatable injuries and has fully recovered from this dog incident, this Court is convinced that the settlement amount of \$45,000 is well within the range of reasonable. Finally, trial courts are obliged to scrutinize

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requests for fees and costs. Because the petition is being run by insurance defense counsel, there are no fees or costs being sought. The petition will be granted.

- 15. In re Smith Trust (PR12630).** Before the Court this day is a petition to fill a vacancy in the office of trustee, and to amend the terms of the trust.

According to the petition, there is now – or soon to be – a vacancy in the office of successor trustee for the Ruby Jane Smith Trust dtd 04/08/16. The trust appears to have been created as a pour-into from decedent’s will, and not actually funded inter vivos. Setting aside the question of whether anyone has been serving as the successor trustee since the time decedent passed, the sole nominee to serve in that position, Roy Gerald Smith, has indicated an unwillingness or inability to assume the role once the trust is actually funded with assets from decedent’s probate estate because he is doing life in prison. Given the unique circumstances, this Court has no trouble treating this as a rejection/declination under §15643 rather than a resignation requiring notice or the consent of others (§15640). This will also insulate Roy from any liability claims under §15641. In the case of a vacancy, “the vacancy shall be filled as provided in the trust instrument.” §15660(b). Here, the trust instrument provides that if Roy does not act, then Michael and/or Paige and/or the Bank of Stockton shall serve as successor trustee(s). Given that Michael and Paige are the residual beneficiaries, and Roy is doing life in prison, it certainly stands to reason that Michael and Paige (alone) should serve as co-trustees of what will amount to their own money. See §15660(d). It does not make sense to this Court to hand the reigns over to a third-party to administer the trust for a fee (§§ 15681, 15686), especially to a lawyer who might be in a position to charge different amounts (§15687) for facially-similar work. With the assistance of current counsel, the beneficiaries can undoubtedly administer this trust on their own. It is not enough for the beneficiaries to merely consent to service by Mr. Opsahi – they must do so with the clear knowledge that they can and should be the ones serving as trustees.

In terms of the second request – to modify the distributive terms of the trust – this Court can plainly see that “the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust,” to wit: taking care of Roy. See §15403(b). It is also fairly plain to this Court that, “owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust,” to wit: providing Roy a place to live and money for needed living expenses. See §15409(a).

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10:00 a.m.

16. **Conservatorship of Villasenor (PR9919).** This is the continued hearing on a petition to establish an irrevocable trust for the conservatee. While this is generally permissible, substituted judgment trusts cannot reserve to the nominated trustee unfettered control over the trust res during and after the settlor's lifetime (see Para 11, 12, 22, 30). Moreover, Para 34 (compensation) is ambiguous. There can be no compensation for trustee services of this kind. This Court informed the conservator that a statutory will might be a better route, and conservator was to have started that process. There is nothing on file, so Court intends to drop the matter from calendar.
17. **Guardianship of Klaverweiden (PR11791).** This matter is on calendar for review and approval of a fourth annual accounting, but there is no proposed accounting on file to review. Counsel to advise.
18. **Guardianship of Roberts (PR11005).** 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.
19. **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. The parties recently announced a resolution of their varied disagreements, but have not clarified to this Court if that resolution includes voluntary termination of the guardianship versus extended parental visits. It is important to keep in mind that "the frequency, duration, and nature of the visits is the subject of the court's sound discretion [and that] court-ordered visitation may not be so extensive that it undercuts the probate guardianship." *Guardianship of Kaylee* (1997) 55 Cal.App.4th 1425, 1432.

1:30 p.m.

20. **Guardianship of Hernandez (PR12472).** Trial, Day 2.
21. **Petition of MHS (CV67113).** Confidential proceeding to change name.