

Department 5 Probate Notes for Friday, May 17, 2024

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8:30 a.m.

- 1. Estate of Costa (PR12441).** No appearance is necessary. This petition for probate and letters testamentary is not ready for approval. There is no proof of publication in the file. See §8124. There is no proof of notice in the file. See §8110. There are no nominations from heirs with co-equal authority. See §§ 8462, 8465. There is no bond waiver or amount set forth as a proposed bond. See §8481. Although the original will appears to have been lodged, there is no copy of the will attached to the petition. Court intends to continue the hearing to 06/21/24, and require supplemental papers to be filed/served on or before 06/12/24.
- 2. Estate of Ross (PR11991).** No appearance is necessary. An attorney may withdraw as counsel of record if conduct by the client renders it unreasonably difficult for the attorney to do his job, including when there is a breakdown in the attorney-client relationship. CRPC 3-700(c); *Estate of Falco v. Decker* (1987) 188 Cal.App.3d 1004, 1014. If the attorney does not have the client's consent, he or she must proceed by way of noticed motion consistent with CCP §§ 284 and 1005, and CRC 3.1362. Courts have a duty of inquiry regarding the grounds for the motion, and are not required to accept at face value vague, unsupported or uncertain representations as to reasons why an attorney wants out. *Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1134-1136. Counsel has a corresponding duty to respond and to describe the general nature of the issue, within the confines of any privilege. *Aceves v. Superior Court* (1996) 51 Cal.App.4th 584, 592-593. The degree of detail is on a sliding scale against counsel's candor and trustworthiness. Regardless of the reasons, a request to withdraw may be temporarily denied when it is reasonably foreseeable that the client would suffer prejudice as a result. *Mossanen v. Monfared* (2000) 77 Cal.App.4th 1402, 1409. Here, this Court is aware that the cognitive decline experienced by one of the co-administrators has made it challenging for counsel to effectively guide the administration. While this Court had hoped that counsel would reconsider, given the challenges these co-executors will no doubt face trying to navigate the balance of this administration, this Court cannot hold counsel to an involuntary servitude which presents a potential conflict of interest. The motion to withdraw is GRANTED, but not yet effective until counsel serves proof of having served the clients with notice of the entry of this order. See 3.1362(e).
- 3. Estate of King (PR11586).** This Court has been patiently waiting for a cogent explanation as to the need for additional time to administer this estate. Last notice was that the litigation taking place in Merced County had concluded, and that a final petition was forthcoming. An OSC re sanctions has already issued in this case. Counsel to advise.
- 4. Estate of Herell (PR12109).** No appearance is necessary. This Court is in receipt of petitioner's 12200 status report, and finds by a preponderance of the evidence that additional time is needed to complete administration of this estate due to the uncertainty of litigation involving the escrow funds. While this Court does not agree with petitioner's statement that no accounting will be required, this Court does agree that an extension of 90 days is warranted. Court intends to set a review hearing date.

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5. **Estate of Schmidig (PR12117).** This Court has previously granted petitioner's request to extend the period for administration of this estate. And sees no reason why the estate cannot now be closed. Petitioner to discuss.
6. **Estate of Ward (PR12198).** Letters were issued on 01/20/23. Pursuant to Probate Code §12200, the personal representative of the estate shall, within 12 months after the issuance of letters, "either petition for an order for final distribution of the estate or make a report of status of administration." A report was received on 02/22/24, indicating additional administrative time was needed to resolve a reverse mortgage issue. There have been no updates since then. However, there has been a motion filed by counsel to withdraw. An attorney may withdraw as counsel of record if conduct by the client renders it unreasonably difficult for the attorney to do his job, including when there is a breakdown in the attorney-client relationship. CRPC 3-700(c); *Estate of Falco v. Decker* (1987) 188 Cal.App.3d 1004, 1014. If the attorney does not have the client's consent, he or she must proceed by way of noticed motion consistent with CCP §§ 284 and 1005, and CRC 3.1362. Courts have a duty of inquiry regarding the grounds for the motion, and are not required to accept at face value vague, unsupported or uncertain representations as to reasons why an attorney wants out. *Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1134-1136. Counsel has a corresponding duty to respond and to describe the general nature of the issue, within the confines of any privilege. *Aceves v. Superior Court* (1996) 51 Cal.App.4th 584, 592-593. The degree of detail is on a sliding scale against counsel's candor and trustworthiness. Regardless of the reasons, a request to withdraw may be temporarily denied when it is reasonably foreseeable that the client would suffer prejudice as a result. *Mossanen v. Monfared* (2000) 77 Cal.App.4th 1402, 1409. Here, counsel advises that after subbing into the case, they have yet to hear from the client despite best efforts. While this Court has some concern regarding the manner in which the client was notified of this motion (see CRC 3.1362(d)(2)), this Court cannot hold counsel to an involuntary servitude when the client is entirely nonresponsive. The motion to withdraw is GRANTED, but not yet effective until counsel serves proof of having served the clients with notice of the entry of this order. See 3.1362(e).
7. **Estate of Ramsgard (PR12135).** No appearance is necessary. The Court, having received and reviewed the Petition for Final Distribution with request for allowance of court costs and legal fees, finds that the petition is not yet ready to approve because there is insufficient information provided to the Court to permit the optional fairness (see §§ 240, 285, 11604(b)) inquiry. See *Estate of Bennett* (2008) 163 Cal.App.4th 1303, 1311. The real property was originally valued at \$430,000, and encumbered by a lien valued at \$290,094.56, but then reappraised for sale at \$370,000. That means the home has roughly \$80,000-140,000 in equity, and yet Cory assigned the bulk of his interest therein for just \$23,430.53. In addition, counsel is using the higher real estate appraisal for purposes of the statutory fee calculation, which is improper if the lower number is what the Court should use to determine the fairness of the transfer. Court intends to continue the hearing to 06/21/24, and require supplemental papers to be filed/served on or before 06/12/24.

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8. **Guardianship of DeLacy (PR10975).** No appearance is necessary. The court, having received and reviewed the petition to approve the 7th accounting, hereby concludes that the accounting will be approved in all respects, that the proposed increase to the bond is approved, and that the matter shall be set for a biennial accounting review, which the Court will set.
9. **In re Souza Trust (PR12443).** No appearance is necessary. Petitioner seeks an order declaring APN 097-190-009 to be an asset of the subject trust dtd 03/04/19. Petitioner is not the acting trustee of the trust, but instead a BFP acquiring an ownership interest in the property from the acting co-trustees. While it seems such a cloud should have been revealed during the escrow period in May of 2021, it apparently escaped everyone's attention. Nevertheless, petitioner has standing pursuant to §850(a)(3)(A) to seek the transfer away from the trustees (where legal title apparently rests) and into its own hands, as the transaction was apparently intended. 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 that 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. Since the property was identified on Exhibit A to the trust instrument as an asset thereof, and there exists a fully executed grant deed attempting to make that transfer into trust (but for a typo), there is no question to this Court that the settlor intended to hold title to the property in trust, and that the subsequent trustees intended to convey good title thereto. See Evid. Code §702; *Forest Lawn Memorial-Park Ass'n v. Superior Court* (2021) 70 Cal.App.5th 1, 8-12. The petition is approved. Counsel to submit a proposed order consistent herewith.
10. **In re Ylimaki Trust (PR12370).** This is a review hearing to confirm that the newly-appointed successor trustee has accepted the appointment and assumed the position. This normally occurs by way of an affirmative written acceptance (§§ 15600, 16000). A written acceptance is not strictly required, but it is the preferred method. There is nothing in the court file either way. Counsel to advise as to status.
11. **Matter of Dunkak (PR12418).** This is a petition for instructions seeking orders relating to assets held in trust, but which the trustor may have sought to remove prior to her passing consistent with Family Code §761 and Probate Code §6101 (sometimes referred to as a reverse *Heggstad*). At issue is whether the acting trustee (and co-settlor) must comply with a 2020 amendment to the family trust carving out the decedent's separate property from the communal trust. As yet there is no proof of service, written responses, or objections filed thereto. Only Victoria Heifner has made a gratuitous general appearance. Petitioner to advise regarding status of service, responses from those negatively impacted by the Petition, and whether this is the type of dispute that can be resolved utilizing the summary procedures in §§ 1022 and 9620, with briefing consistent with CCP §§ 437c, 1010, 1005(b), 1005.5, and CRC 3.1306. If not, parties may be asked to select trial date(s), and to advise whether either party is of the opinion that Cal. Const. Art. 1 §16 provides any right to a jury regarding any factual dispute involving a question of law herein. See, e.g., §§ 825, 17006.

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9:30 a.m.

12. **Guardianship of Dalrymple (PR11165).** The Court, having received and reviewed the GC-251 reports, is unable to make the required findings at this time since the guardians failed to complete important parts of the report (Para 1.e., 2, 6.a.). In addition, this Court has concerns regarding school grades for the younger ward. Guardians to discuss. In the interim, a temporary extension of the guardianship is in the wards' best interests.
13. **Guardianship of Hudson (PR11797). No appearance is necessary.** The Court, having received and reviewed the GC-251 report, finds by a preponderance of the evidence that the guardianship remains necessary or convenient, and that the guardian is serving the ward's best interests. Since the ward is slated to age-out of the guardianship, a review hearing will be set to correspond to the automatic termination. Should the guardian and ward determine that an extension is warranted, they shall file the papers in advance of the ward's 18th birthday.

10:00 a.m.

14. **Conservatorship of Casner (PR10398).** Non-family member petition for appointment as limited conservator over person and estate of individual with limited cognitive developmental disabilities. Existing conservator (bio mom) has requested to either terminate the guardianship or to permit a successor conservator to assume obligations. Prior investigative report indicated that the conservatee wanted to terminate the conservatorship, but that appears to have changed. Court investigator must perform follow-up investigation now that new petition for appointment has been filed. Court intends to re-appoint counsel for the conservatee.
15. **Conservatorship of Martinez (PR9787).** No appearance is necessary. The Court, having received and reviewed the 8th accounting, finds that the accounting is proper and deserving of approval in all respects. Court intends to execute the proposed order.
16. **Guardianship of Gonzales (PR12260).** There is no GC-251 report on file. The matter was recently heard in December, but a shorter review was set.
17. **Guardianship of Klaverweiden (PR11791).** No appearance is necessary. The Court, having received and reviewed the 3rd accounting, finds that the accounting is proper and deserving of approval in all respects. Court intends to execute the proposed order.
18. **Guardianship of Ireland (PR11484).** The Court has received and reviewed the court's investigative report regarding the ongoing need for this guardianship, the propriety of the current guardians continuing to serve in that capacity and bio mom's recent request (through maternal aunt) to switch the guardians. Jury trial in CRF70157 set for September. Court must set §2650 hearing and consider suspension of co-guardian powers (§2654) in the interim.

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19. **Guardianship of DeLacy (PR10975).** Erroneously scheduled for 8:30 and 10:00.
20. **Guardianship of Guida (PR12448).** Petition to establish temporary guardianship over 1 child based on bio mom's potential abandonment. Proposed guardian (maternal aunt) to address GC-212 Para 5, 11, 13, 19. Proposed guardian to explain other names on GC-210(P), Para 1, and if those persons are seeking appointment as well. Proposed guardians to affirm status of bio dad. Since proposed ward is 16, proposed guardian to secure consent and ascertain whether emancipation is a viable option for this ward. Court to confirm with ward whether ward requests appointment of counsel to assist with this petition.
21. **Guardianship of Coard (PR10595).** No appearance is necessary. The guardianship has lapsed by operation of law.

1:30 p.m.

22. **Estate of Babbitt (PR12375).** This is the follow-up hearing on Daniel and Benjamin's motion to (1) identify "family heirlooms" held by the administrator and (2) order Patricia to deliver those unless they are believed to be part of decedent's estate. As noted, the objectors are required to supply a list of those items, as well as a form of tracing sufficient to permit a finding that the items are not within the decedent's estate. The goal is to resolve these issues short of a contested creditor claim process so that Patricia can complete her service as administrator.
23. **Guardianship of Rivera (PR11862).** Update on appointments for minor and bio dad. Update on contact from, or efforts to find, bio mom. Amended petition fails to specify the legal grounds for termination as to each bio parent. Compare §§ 7822 (abandonment), 7823 (neglect), §7824 (substance abuse), or 7825 (felony). The amended petition appears to base bio mom's deficiency on abandonment. In order to constitute abandonment there must be an actual desertion, accompanied with an intention to entirely sever, so far as it is possible to do so, the parental relation and throw off all obligations growing out of the same. Abandonment is established only when there is a physical act - leaving the child for the prescribed period of time - combined with an intent to abandon, which may be presumed from a lack of communication or support. But see *In re H.D.* (2019) 35 Cal.App.5th 42, 50-52 [going into a dark hole as a result of drug addiction may not be abandonment]. The basis for terminating Father's parental rights is unclear (see Para 7).