

Department 5 Probate Notes for Friday, May 30, 2025

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8:30 a.m.

1. **Conservatorship of Kipper (PR10683).** No appearance is necessary. Related to #11 at 10:00 a.m. (will call this case at 10 a.m. as well). This Court, having received and reviewed the confidential investigative report, intends to find by clear and convincing evidence that a conservatorship remains necessary for this individual, that a general conservatorship appears to be the least restrictive option for this individual, and that the conservator continues to serve in the conservatee's best interests. Court to set annual review date.
2. **Estate of Castanon (PR12635).** Before the Court this day is a probate avoidance by-pass petition to determine testate succession to real property. The petition is not ready for approval for a number of reasons. First, there is no evidence sufficient from which to find who should serve as decedent's personal representative, and thus who can consent to the use of this procedure (§13150(b)(1))). Second, the petition includes an obvious typo regarding the date of death. Third, there is no evidence showing this Court that the real property subject to the petition was decedent's primary residence, as that term is defined by statute (§13151(a)). Fourth, the petition does not include any proof of having given notice to the heirs or devisees (§13151(b)). Fifth, while it like does comply, there is no Inventory & Appraisal showing the gross value of the real property (§13152(a)(2)). Sixth, there is no evidence from which to show that the property was owned by the decedent at the time of her passing (§13152(a)(3)). Finally, there proffered will is not self-proving and not adequate to establish succession by testacy without subscribing witness attestation, so petitioner will need to confirm passage via intestacy (§13152(a)(4)).
3. **Estate of Fountain (PR12509).** Before the Court this day is a petition to allow fees/costs and approve the proposed distribution of the probate estate into the devisee trust. The only uncertainty regarding the petition is the basis for the proposed statutory fee. Pursuant to §10810(b), the value of the estate accounted for by the personal representative "is the total amount of the appraisal of property in the inventory, plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales." The I&A shows one amount, but the petition shows that amount *plus* a sizable receipt that is not mentioned anywhere in the petition. The fee cannot be allowed without a further explanation.
4. **Estate of Powers (PR12278).** No appearance is necessary. Before the Court this day is a petition to allow fees/costs and approve the proposed distribution of the probate estate. The fees, costs, reserve and proposed distribution are all appropriate. Court intends to grant the petition in full.

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5. **Estate of Gallo (PR12259).** Before the Court this day is a petition to allow fees/costs and approve the proposed distribution of on intestate probate estate. This proceeding was released into the wild via *limited* administrative authority on 07/21/2023 in favor of the surviving spouse, and has experienced a number of challenges along the way. The Court file does not presently include any objection to the petition filed by decedent's children, so assuming there to be no objection, the Court will proceed to review the petition from that vantage point. Although the loss on the sale of the primary residence is unfortunate, there is no evidence before the Court from which to conclude that the loss is attributable to any shortcoming on the part of petitioner or counsel. Although it is unclear to this Court why petitioner made monthly mortgage payments, as well as the June arrears payment of almost \$8,000, rather than allow the property to sell in default (yielding a higher return to the estate), with no objection this Court will not surcharge that decision. Finally, although this Court was surprised to see a request for extraordinary fees in this case (given the history), and the supporting declaration for those fees is painfully inadequate (see CRC 7.702) considering there is no explanation for what the "litigation" was or why the home sold for such a staggering loss, the absence of opposition coupled with the modest amount sought leads this Court to the more expeditious outcome of summarily approving.
6. **Estate of Belletto (PR12514).** No appearance is necessary. This was to be a review hearing to confirm compliance with §8800, which has already been satisfied.
7. **Estate of Cordero aka Elam (PR12627).** Related to #8. Before the Court this day is a petition to administer an intestate estate by Michelle's adult brother Joseph. Based on the petition, Michelle left no descendants and is survived only by two siblings – one of whom seeks appointment as a personal representative. Under such circumstances, it is this Court's custom and practice to request nomination papers from the other (James) to avoid challenges down the road. See Probate Code §§ 8461, 8465, 8467. That is particularly apt here where there is only one bond waiver on file and this Court cannot tell if that waiver is from petitioner or the other brother. See Probate Code §8481(a)(2).
8. **Estate of Elam aka Cordero (PR12629). Related to #7.** This is a petition to admit Michelle's putative will to probate, and for Letters Testamentary with IAEA authority to her nominated executor Danielle. Based on this petition, decedent is survived by two children – one of whom is nominated to serve as executor, and both of whom are devised equal shares of the estate. The will is not self-proving, and would require clear and convincing proof of its authenticity before its admission. The Court previously advised that, as a nonresident personal representative, petitioner would be required to have on file a permanent address statement (§8573). The Court granted special administrative powers just to keep the real property out of default and to avoid loss of the only estate asset.

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9. **In re Davis Family Trust (PR12638).** Before the Court this day is a petition to fill a vacancy in the office of successor trust for the Arthur and Isabel Davis Family Trust – 1989. The settlors have both passed on. The instrument provides at Para 5.06 in pertinent part as follows: “Upon the death of [surviving] Trustor, Blake Franklin Davis shall become Successor Co-Trustee. If Blake Franklin Davis shall be unable or unwilling to act as Trustee, then Donald Arthur Davis shall become Successor Trustee.” Both Blake and Donald have passed away. The instrument does not provide further express direction as to who should fill the vacancy. However, the law provides that “if the trust instrument provides a practical method of appointing a trustee or names the person to fill the vacancy, the vacancy shall be filled as provided in the trust instrument.” §15660(b) [emphasis added]. Although the instrument does not “name” the next in line, there is a practical method set forth in Para 4.01(17) under the provision for resignations, to wit: “a successor Trustee shall be selected by a majority of the adult beneficiaries then entitled to receive income from the trust ... a successor trustee may qualify by filing a written acceptance of trust.” The instrument here provides in Para 2.04 that the adult beneficiaries are Blake, Donald and petitioner. Blake left no issue. Donald left one adult issue, Traci, who has already nominated (ie “voted for”) petitioner. Petitioner voted for himself, and accepted the job in writing. Since all of the adult beneficiaries of the trust voted to have petitioner serve as trustee, petitioner is the successor trustee, with or without a court order. As a practical matter, it appears to have been an oversight for Arthur and Isabel not to have included petitioner in Para 5.06. The petition is granted.
10. **In re Kiriluk Family Trust (PR12636).** Before the Court this day is a petition to amend an irrevocable sub-trust, brought forth by the surviving trustor – with the express written consent of all beneficiaries – to effectively merge the two sub-trusts into a single revocable trust. Pursuant to §15403, “if all beneficiaries of an irrevocable trust consent, they may petition the court for modification or termination of the trust.” As noted, the only portion of this trust that is irrevocable is the “Family” sub-trust that was created to shelter assets from estate taxes when Authur S. Kiriluk died in 1992. While this Court agrees that it need not be segregated in such a way as to miss out on the right to a step-up in basis upon petitioner’s passing, “if the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust.” §15403(b). What was the material purpose of this trust? To avoid excess taxation, and pass as much estate as possible to petitioner and Rachelle as possible. Not only does the proposed modification perpetuate this purpose, it likely enhances it. Petitioner’s concern about not having the consent of Sonora Area Foundation is unnecessary since Sonora Area Foundation is only a beneficiary of the

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revocable sub-trust, not of the irrevocable sub-trust that is the subject of this request to modify. Even if that consent were needed, “on petition by a trustee, the court may terminate [a sub-trust] if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the [sub-trust] under its terms would defeat or substantially impair the accomplishment of the purposes of the trust.” As noted, keeping the Family sub-trust in place causes the loss of the step-up in basis and the flexibility of being to effectively manage the funds bound therein to avoid an estate tax that no longer exists. There was no reason to believe the settlors could have anticipated such a change in the estate tax structure in such a short period of time, and no reason to believe they would have created sub-trusts had they predicted these changes. Thus, under §15403 and §15409, the proposed modification by absorbing the family sub-trust into the marital sub-trust and creating a single revocable trust is appropriate. Petition granted.

10:00 a.m.

11. **Conservatorship of Kipper (PR10894).** No appearance is necessary. Related to #1. This Court, having received and reviewed the confidential investigative report, intends to find by clear and convincing evidence that a conservatorship remains necessary for this individual, that a general conservatorship appears to be the least restrictive option for this individual, and that the conservator continues to serve in the conservatee's best interests. Court to set annual review date.
12. **Guardianship of Gonzalez (PR12541).** This began as a petition for a temporary guardianship over two children by the paternal grandmother while the bio father was incarcerated. Both parents have a long history of substance abuse, and have given their consent to the guardianship; however, the guardian has demonstrated some concerns regarding appropriate protective boundaries. Court is awaiting updates to investigative report before moving past temporary guardianship.
13. **Guardianship of Hicks (PR12524).** This is a temporary guardianship held by both grandmothers over two young men, set to expire on 08/16/2025 if not otherwise adjusted by court order. Before the Court this day is the initial hearing on bio mom's RFO to remove the maternal grandmother as guardian for her failure to comply with a visitation step-up plan set forth in Court's Final Statement of Decision issued 04/10/2025 (and for related relief in the form of OSC re Contempt and for legal fees). Bio mom's allocation has just stepped up from video chats to in-person visits on alternate Weds/Sats. Court has received written response to OSC from guardian and bio dad expressing that, despite proclamations to this Court and the investigator to the contrary, the wards are recalcitrant. For that reason, among

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others, the Court has granted bio mom's previous request to appoint minor's counsel, and has conducted a further interview of the wards. There is a related OSC re Contempt by maternal grandfather who alleges that his visitation allocation is not being honored either, but this is understandably secondary and may give way should the guardianship terminate and the parents revert to the family court (as is expected).

14. **Guardianship of Lima (PR12496).** This case is related to FL16854 (family) and FL18454 (child support). See #17. Bio dad has some legal and physical. Bio mom had alternate weekends but those were suspended following positive test. Maternal grandmother filed for guardianship based on allegations of bio dad's unfitness and preferences of children to be in bio mom's care. No guardianship has been established as petitioner had yet to demonstrate best interests by clear and convincing evidence. Counsel has been appointed for the proposed wards. Petitioner and bio dad agreed to scheduled visits for petitioner in the interim. Petitioner now alleges a new round of concerns. Court investigator to be re-dispatched, with possible referral to CWS.
15. **Guardianship of West (PR12380).** No appearance is necessary. The Court, having received and reviewed the GC-251 with attachments for both wards, 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. Court intends to set an annual review date to align with termination by operation of law.
16. **Guardianship of Harwell et al (PR12538).** Before the Court this day is the hearing to extend the paternal grandparents' temporary guardianship over three young children for another 3-6 months, assuming the guardians have demonstrated a sufficient ability to protect the wards and guard against sympathetic family members with substance abuse problems. There was a related proceeding between the proposed guardian and bio dad (FL13439). Consent from the bio parents was extended, then revoked. Guardians to advise as to the whereabouts of the bio parents since the last hearing.
17. **Marriage of Lima (FL16854).** Related to #13. Family proceeding transferred from D.2. At present, Mother has no parenting time, but recently had alternate weekends. Based on in-chambers interview with children, Court intends to establish a step-up plan for Mother provided that she comply with substance abuse detection/testing. Parties will be referred to court mediation as a first step. If cooperation can be achieved, Court will consider dismissing guardianship petition without prejudice (and without risk of sanctions).

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1:30 p.m.

- 18. Petition of O'Rourke (PR12585).** Confidential proceeding for relief from lifetime firearms prohibition. Review of DOJ and investigative report. Question re venue. Trial setting.
- 19. Petition of DRG-P (CV67140).** Nonconfidential petition to change name. No proof of publication in the court file.
- 20. Marriage of Roberge (FL17774).** Trial Day 2.
- 21. Petition of EAR (CV67139).** Nonconfidential petition to change name. No proof of publication in the court file.