

Department 5 Probate Notes for Friday, June 6, 2025

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8:30 a.m.

1. **Estate of Pomeroy (PR12644).** Before the Court this day is a petition to admit a will to probate, and to issue Letters Testamentary to the nominated executor thereof. The petition is not yet ready for approval. First, the will is not self-proving because there is no reference from the will maker or the subscribing witnesses that the will maker was “of sound mind” at the time the will was made. See §6100(a). Thus, at least one subscribing attestation (DE-131) will be required to avoid defaulting to the clear and convincing requirement under §6110(c)(2). In addition, “a petition for administration of a decedent's estate shall not be heard by the court unless an affidavit showing due publication of the notice of hearing has been filed with the court” (§8124), and there is as yet no proof of publication in the court file. Court intends to continue the hearing unless the defects can be cured in advance of the hearing. If they can, Court will grant and set §12200 date (as I&A already completed).
2. **Estate of Todaro (PR12547).** No appearance is necessary. This was to be a review hearing to confirm compliance with §8800, which has already been satisfied.
3. **Estate of Bratcher (PR12436).** Review hearing to inquire of family members whether any assets remain in the estate after bank and brother “took everything,” and if the petition ought to be dismissed pursuant to §12251, with or without discharge of personal representative.
4. **Estate of Jasper (PR12521).** No appearance is necessary. The Court, having received and reviewed the petition to approve the account, allow the fees/costs, and order distribution as proposed, will be approved pursuant to the supplemental adjustments made.
5. **Estate of Higgins (PR12328).** No appearance is necessary. The Court, having received and reviewed petitioner's TUO-PR-125, intends to find by a preponderance of the evidence that good cause exists to extend the period of administration for another 120 days. Court intends to set another §12200 review hearing for 10/03/2025 at 10:00 a.m.
6. **Estate of Fortune (PR12502).** No appearance is necessary. The Court, having received and reviewed the petition to approve the account and order distribution as proposed (no fees or costs are sought) will be approved so long as petitioner provides this Court with satisfactory proof that the financial accounts were not POD/TOD accounts or designated beneficiary accounts. Assuming they were indeed estate assets, in order to secure discharge it will be necessary to show that the financial accounts have been transferred out of the decedent's name (something that usually occurs during the estate process).

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7. **Estate of Nichols (PR12411).** This probate action was released into the wild on 01/10/2025. Pursuant to Probate Code §8800, petitioner had four (4) months from then to file a final Inventory & Appraisal. A review of the court file reveals a vacancy where the DE-160 should be. Petitioner to advise.
8. **In re Ruby Jane 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.

9. **Conservatorship of Winn (PR11658).** No appearance is necessary. This Court, having received and reviewed the confidential investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory qualifications for a limited conservatorship of the person, that a limited conservatorship of the person continues to be the least restrictive option for this individual, and that the conservator continues to serve in the conservatee's best interests. The court does question whether this individual is due to be re-evaluated for possible demotion to a general conservatorship given the decline in her overall cognitive functioning, but will defer to the conservator and court investigator at this time. Court to set annual review date.
10. **Conservatorship of Arndt-Linsley (PR11276).** No appearance is necessary. This case is related to #12 and #13. This Court, having received and reviewed the confidential investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory qualifications for a general conservatorship of the person, that a general conservatorship of the person continues to be the least restrictive option for this individual, and that the conservators continue to serve in the conservatee's best interests. Court intends to set annual review date.
11. **Conservatorship of Carilli (PR12620).** Before the Court this day is the continued hearing on petitioner's application to establish a general conservatorship over the person and estate of his elderly father. According to petitioner, the primary concern is that he believes his father is "substantially unable to manage his own financial resources or resist fraud or undue influence." §1801(b). To support this, petitioner must provide "knowledge of the facts or by the declarations or affidavits of other persons having knowledge of those facts." §1821(a)(2). Petitioner must demonstrate the need by clear and convincing evidence (§1801(e)), and cannot rely solely on "isolated incidents of negligence or improvidence" (§1801(b)). In addition, because "it is the intent of the Legislature to determine the appropriateness and extent of a conservatorship and to set goals for increasing the conservatee's functional abilities to whatever extent possible" (§1800(b)), lesser alternatives (like a POA) must be considered when the primary focus involves financial vulnerability. At the initial hearing, it was determined per §1471(a)(1) that counsel would be appointed to represent the prospective conservatee, who not only opposed the petition but did so with a reasonable apparent understanding of the proceedings. Court is awaiting word on whether counsel has accepted the appointment.

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12. **Conservatorship of Arndt-Lindsey (PR11278).** No appearance is necessary. This case is related to #10 and #13. This Court, having received and reviewed the confidential investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory qualifications for a general conservatorship of the person, that a general conservatorship of the person continues to be the least restrictive option for this individual, and that the conservators continue to serve in the conservatee's best interests. Court intends to set annual review date.
13. **Conservatorship of Arndt-Lindsey (PR11279).** No appearance is necessary. This case is related to #10 and #12. This Court, having received and reviewed the confidential investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory qualifications for a general conservatorship of the person, that a general conservatorship of the person continues to be the least restrictive option for this individual, and that the conservators continue to serve in the conservatee's best interests. Court intends to set annual review date.
14. **Guardianship of Webb x2 (PR11467).** This is an annual guardianship review of two wards. Pursuant to Probate Code §1513.2(a), every year the guardian shall complete and return to the court a status report (GC-251). The court clerk is required to provide a reminder to the guardian, along with a blank GC-251, which did occur herein on 04/18/2025. Based on prior reporting, it does appear that the guardianship remains necessary/convenient, and may be temporary carried over until a report and order are completed. Guardian to advise as to the status.
15. **Guardianship of Okelsrud (PR12397).** No appearance is necessary, as the hearing was continued by court order to permit service and notice of bio dad's recent TECO to bio mom. There is presently on calendar a petition by the guardian (paternal grandmother) to terminate her own guardianship in favor of restoring bio dad's parenting rights and duties, as well as a new petition by bio dad to terminate the guardianship as "reunify" the family. The court investigator was previously dispatched to locate and give notice to bio mom. In the interim, the guardianship itself was approved and extended for another year. Also in the interim, bio dad filed a TECO in this guardianship case to suspend bio mom's parenting allocation should the guardianship be terminated. Although the TECO should have been filed in the family case (FL10299), this Court will likely need to relate the cases anyway and will treat the TECO as an RFO/TECO in the family case. Bio dad will need to effectuate service upon bio mom, at which time termination of the guardianship and revision of the existing family court order can be addressed in a single hearing.

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16. **Guardianship of Alexander (PR12459).** This is a family petition 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. 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. Since petitioners declined to drop their petition, this Court appointed minor's counsel per Probate Code §1611. Court is awaiting acceptance from minor's counsel and updated reporting.
17. **Guardianship of Kisling (PR11302).** 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. If guardian appears, Court to inquire regarding migraines, parent visits, and *current* schooling.
18. **Thomson v. Grogan (FL18372).** No appearance is necessary. Matter is continued at request of guardian to permit ward to attend ballet event.

1:30 p.m.

19. **C.R. v. B.F. (FL18907).** Confidential proceeding re parentage.

3:00 p.m.

20. **Liuzzi v. Anderson (FL15525).** In-chambers conference with minor.