

Department 5 Probate Notes for Friday, July 11, 2025

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8:30 a.m.

- 1. Estate of Castanon (PR12635).** No appearance is necessary. Before the Court this day was to be the continued hearing on a probate avoidance by-pass petition to determine testate succession to real property. Based on a number of infirmities, and subsequent review by a trained attorney, it appears that petitioner may be opting to proceed in a different fashion. A status report indicates as such, as well as a desire for a 90-day breather to get all the heirs on board with the new approach. Good cause exists for the requested breather. Court intends to set a review hearing for 10/03/2025 at 8:30 a.m. Petitioner to give notice.
- 2. Estate of Herell (PR12109).** This seemingly innocuous intestate petition identifying one asset appraised at under \$200,000 was released into the wild more than 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. The sale concluded, and the funds distributed without counsel's input or a court order. This is now the 6th review hearing in which both the lawyer and the court are in the dark about what is happening, which leaves only one option: citation to the petition to personally appear and show cause for why sanctions should not be imposed. Counsel is directed to prepare the citation and effectuate service upon the client.
- 3. Estate of Gallegos (PR12463).** No appearance is necessary. Before the Court this day is a petition to approve the plan for final distribution, with waivers of formal accounting. There is only one asset in the estate: a parcel of real property, which can only be split via co-ownership. While the parties have not specified the manner in which they intend to take title, given that this is an intestate split designated as "equal" pursuant to §6402, the presumption is that they will take title as tenants in common (see Civil Code §686) and not as joint tenants (see Civil Code §683). Since the proposed order does not clarify, counsel should address the issue with the real parties in interest and make sure they understand the nature of taking title. Despite the typo at 3:26, the fee request is correct. As for counsel's charging lien, counsel is no doubt aware that Civil Code §2883 only permits the lien to attach to the half of the property distributed to the party actually signing the retainer agreement, which this Court assumes to be the petitioner only. In accord, Probate Code §11424. The rule would be the same whether the parties take title as TIC or joint with right of survivorship. See *In re Brace* (2020) 9 Cal.5th 903, 916; in accord, *Dieden v. Schmidt* (2002) 104 Cal.App.4th 645, 653; *Grothe v. Cortlandt Corp.* (1992) 11 Cal.App.4th 1313, 1319. The proposed order should specify "tenants in common" and that the charging lien only attaches to Charlene's half.

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4. **Estate of Smitheman (PR12560).** No appearance is necessary. Before the Court this day is the §8800 review hearing, which will not be needed as petitioner has already complied by filing a final I&A.

5. **Estate of Spreadborough (PR12343).** Before the Court this day is a petition to approve the plan for final distribution, with a waiver of formal accounting. There was only one asset in the estate: a parcel of real property, which petitioner was unable to sell and ultimately lost in a foreclosure sale. Apparently, there was no consideration given to acceptance of a deed in lieu (see §9850), and due to the size of the financing encumbrance on the property, the trustee's sale yielded no surplus to the estate. There being no other assets, petitioner was free to petition this Court for termination and discharge per §12251. Petitioner elected instead to proceed with a §12200 petition with no distribution plan except for an agreement to compensate counsel for a statutory fee and costs with funds outside the estate. The problem this Court is having is that decedent left no will providing for the payment of legal fees (see §10812), and statutory fees are only recoverable on the difference between the appraised value and sale price (see §10810) – but petitioner has not informed this Court what the sale price was. Once the I&A was completed in early 2024, this estate appears to have been insolvent, which begs the question why was probate continued thereafter?

6. **In re Patton Property Trust (PR12477).** This is a special proceeding to address alleged concerns regarding the existence and scope of competing trust instruments, pitting members of a blended family at odds with one another. An initial *Breslin* mediation took place, without success. A second *Breslin* mediation apparently bore fruit, as a settlement agreement was circulated and executed by the parties. On 04/24/2025, Lorna Atterbury filed in PR12460 a motion to strike specific provisions from the settlement agreement – even though she signed the settlement agreement and was represented by counsel. On 05/09/2025, Bonnie Mattal filed a petition in PR12477 to enforce the settlement agreement as is, which this Court deemed a response to Lorna's motion to strike. This Court invited the parties to meet and confer in the hopes of resolving this apparent impasse. Since then, Lorna was retained a new attorney. There is no word yet on where we stand regarding the settlement agreement, and if we will need an evidentiary hearing on the enforceability thereof. Parties to address discovery, options for summary procedures, and trial estimates.

7. **Estate of Bollinger (PR12656).** On 01/14/2025, Dylan Eterovich filed a petition to administer an intestate estate on behalf of decedent. See PR12580. Due to a myriad of deficiencies, the petition was not immediately granted, and was eventually voluntarily dismissed. See PR12580. A few months later, decedent's son filed the pending petition to succeed to his father's primary residence. Although recent changes to the probate avoidance by-pass petition to determine intestate succession to real property have made these petitions

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unwieldy, the new DE-310 really helps. The form makes plain two prerequisites that do not exist in this case. First, in order to use the by-pass, there must not have been a previous probate proceeding or written consent must be attached. See §13150(a) and (b). Petitioner indicates that no prior probate action was used (sub a), but that is not true. See PR12580. As such, a personal representative must give consent in writing (sub b) in order to use this by-pass. Second, when decedent died in June of 2022, the monetary cap on by-pass petitioners was \$184,500.00. See §13152(f)(2). Although the estimated value of the residence was below the cap in PR12580, here in PR12656, the probate referee has it at \$265,000 – well above the 2022 cap. Although this Court would be willing to consider briefing on the issue, there is nothing apparent in Probate Code §3 that would suggest prospective application of the higher (\$750,000) cap for by-pass petitions on primary residences when the new legislature specifically retains the old caps in subsection (f). As such, petitioner will be required to proceed by way of a traditional probate petition, as was attempted in the first case back in January.

10:00 a.m.

8. **Conservatorship of Egan (PR10510).** 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 requirements for a general conservatorship of the person, that a general conservatorship continues to be the least restrictive alternative for this individual, and that the conservator continues to serve the conservatee's best interests. Court intends to set annual review date. However, this Court does wonder if this individual would be equally well-served in a limited conservatorship, given what appears to be a very high level of independence of social functioning.
9. **Conservatorship of Kuffler (PR12289).** At the hearing on 03/14/2025, this Court made clear to the parties that “the penultimate issue regarding the conservatee's authority to execute a settlement agreement must be held in abeyance pending a determination in Dept. 1 about the very existence of any settlement agreement in the first instance.” This Court takes judicial notice of those proceedings (Evid. Code §455), and can see from the Order entered 06/24/2025 that the conservator does not appear to be pressing the settlement issue anymore. Since it now appears that the parties intend to try that personal injury case, this Court questions the need for keeping this particular conservatorship case active. The order appointing the conservator on a temporary basis has already expired, so at present there are no orders, or powers, in existence. Is there an agreement to voluntarily dismiss?

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10. **Conservatorship of Dirubio (PR12643).** Before the Court this day is the initial hearing on a petition to accept a transfer in of an existing conservatorship out of Maine, as well as the establishment of a temporary general conservatorship of the person. A transfer shall include “a certified copy” of the other state’s provisional transfer order, and must state facts sufficient for this Court to find that the transfer is in the best interests of the conservatee, that the conservator is eligible for appointment, and that the conservatee meets the statutory requirements of this state for a conservatorship. See Probate Code §2002. A court investigator must be appointed. Assuming the transfer is provisionally granted, a full evidentiary hearing must be concluded within 60 days. A transfer and a new petition are distinct and not dependent upon one another. See §2002(k). Assuming the conservator wishes to retain medical decision-making, there must still be a physician’s capacity declaration submitted. Court “shall” appoint counsel for conservatee. See §1471(a)(1).
11. **Conservatorship of Swenson (PR11918).** 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 requirements for a general conservatorship of the person, that a general conservatorship continues to be the least restrictive alternative for this individual, and that the conservator continues to serve the conservatee's best interests. Court intends to set annual review date.
12. **Conservatorship of Hanna (PR11661).** 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 requirements for a general conservatorship of the person, that a general conservatorship continues to be the least restrictive alternative for this individual, and that the conservator continues to serve the conservatee's best interests. Court intends to set annual review date. However, Court expects an immediate report if the conservatee is released from prison and does not wish to learn of his release casually in an annual review setting – especially since the conservator does not have a living plan yet in place for the conservatee when he is released.
13. **Conservatorship of Longeway (PR12265).** This appears to be a biennial review of a conservatorship, but the court file is barren. May need to be continued.
14. **Guardianship of Powell x2 (PR12128).** This is related to #17 and #18. The Court, having received and reviewed the GC-251 reports for both wards with attachments, intends to find by a preponderance of the evidence that the guardianships remain necessary/convenient, and that the guardians continue to serve the best interest of the children. Court will set annual review date.

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15. **Guardianship of Gayle (PR12283).** This is related to #21. The Court, having received and reviewed the GC-251 report, intends to find by a preponderance of the evidence that the guardianship remains necessary/convenient, and that the guardian continues to serve the best interest of the child. Court will set annual review date.
16. **Guardianship of Roberts (PR12554).** Review hearing to determine status of CWS.
17. **Guardianship of Powell x2 (PR11554).** This is related to #14 and #18. The Court, having received and reviewed the GC-251 reports for both wards with attachments, intends to find by a preponderance of the evidence that the guardianships remain necessary/convenient, and that the guardian continues to serve the best interest of the children. Court will set annual review date.
18. **Guardianship of Powell (PR11603).** This is related to #14 and #17. The Court, having received and reviewed the GC-251 report with attachment, intends to find by a preponderance of the evidence that the guardianship remains necessary/convenient, and that the guardians continue to serve the best interest of the child. Court will set review date.
19. **Guardianship of Steele (PR11943).** Before the Court this day is both the annual review of the guardianship, as well as the continued hearing on bio mom's petition to terminate the guardianship. The annual review report is submitted and sufficiently complete. According to the guardian, the bio parents are sufficiently stable to return to the role of parenting. Court investigator is still investigating and Court will await report. The Court, having received and reviewed the GC-251 report, intends to find by a preponderance of the evidence that the guardianships remain necessary/convenient, and that the guardian continues to serve the best interest of the children. Court will set annual review date in the meanwhile. Parties to discuss parenting allocation in FL16028 should guardianship case be terminated.
20. **Guardianship of France (PR12603).** The Court, having received and reviewed the investigative report, the consent forms, the petition and all supporting documents, intends to find by a preponderance of the evidence that establishment of a guardianship is necessary and/or convenient to the welfare of the child. However, there is a notice defect in that bio dad has not been identified, let alone put on notice.
21. **Guardianship of Hickie (PR12284).** This is related to #15. The Court, having received and reviewed the GC-251 report, intends to find by a preponderance of the evidence that the guardianship remains necessary/convenient, and that the guardian continues to serve the best interest of the child. Court will set annual review date.

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1:30 p.m.

22. **Marriage of Benitez (FL18686).** Settlement conference and possible bifurcation.
23. **Petition of MGH (CV67030).** Nonconfidential petition to change name. No proof of publication. Prior hearing continued.
24. **Petition of CK (CV67198).** Nonconfidential petition to change first name.
25. **Petition of AS (CV67277).** Related to FL13364. Nonconfidential petition to change last name of minor child; no proof of publication; no consent from, or direct notice to, bio father. See CCP §1277(a)(4). No proffer as to best interests. CCP §1278.5.