

Department 5 Probate Notes for Friday, July 25, 2025

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8:30 a.m.

- 1. Estate of Todaro (PR12547).** No appearance is necessary. Before the Court this day is a petition to approve the plan for final distribution, with waiver of formal accounting. The proposed distribution, including the proposed compensation for fees and reimbursement for expenses, is approved.
- 2. Estate of Herell (PR12109).** Before the Court this day is a petition to approve the plan for final distribution, with waiver of formal accounting. Although the petition identifies a number of obvious anomalies with how this administration was handled, the only anomaly worth noting at this time is that the fee basis should be \$160,000, not \$130,000 (the I&A had the real property at \$190,000 with a \$30,000 loss at sale). This would increase the statutory legal fee, which this Court is not authorized to reduce without an express waiver from counsel. In addition, while counsel has indicated a willingness to waive the extraordinary fee, this Court notes that a reasonable fee in the range of \$3,000 was absolutely earned and would be awarded if counsel decided to stand on his rights given his client's errant decision to distribute the cash estate without authority. This is not the kind of case that this Court would necessarily condone a hair cut to the earned legal fees.
- 3. Estate of Myers-Bridle (PR12535).** Before the Court this day is a petition to approve the plan for final distribution, with waiver of formal accounting. Given that §6401 concerns identified in previous probate notes have been put to rest, the Court does not see any concerns with the balance of the petition or the proposed distribution for statutory fees, reimbursable expenses, or the proposed reserve (though the factual predicate for a reserve is unclear). What this Court is not satisfied with, as yet, is the proposed distribution to the children. Pursuant to Probate Code §3920(a), custodial property belonging to a minor "shall transfer" to the minor upon the minor's attainment of 18 years unless that property is a blocked security (§3909) or delayed for distribution by a "governing will or trust." Since decedent's stocks were liquidated, and this is an intestate estate, the statutory presumption is that the transfer is to take place on their 18th birthday. Petitioner is asking permission to manage the funds until they each turn 25, without a proffer of good cause. Worse yet, the guardian ad litem for the children waived notice of this hearing, effectively abdicating her role as protector of the children's interests. This Court shall expect an explanation from both the petition and the GAL or an agreement to simply deposit the share belonging to the children in a blocked money market account at a local bank, accessible to each of them upon reaching the age of 18 (in just a few years).

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4. **Estate of Vasquez (PR12468).** No appearance is necessary. Before the Court this day is the §12200 review hearing, which will not be needed as petitioner has already complied by filing a petition to approve the proposed distribution.

5. **In re Galagar Family Trust (PR12658).** This is a petition filed by the presumptive successor trustee to confirm her role as acting trustee, and to instruct on distribution where certain pages of the instrument have been lost. As established by the attached death certificates, the trustors have both passed away, leaving a vacancy in the office of trustee. The law provides that “if the trust instrument names the person to fill the vacancy, the vacancy shall be filled as provided in the trust instrument.” §15660(b). Although Page 39 is missing, Page 1 clearly states that Melonie is the successor trustee. Thus, no court formality is required to confirm that petitioner has correctly surmised that she has properly assumed the role as acting trustee, which her siblings apparently take no issue with. Even if the trust were entirely silent on the issue, “on petition of any interested person, the court may, in its discretion, appoint a trustee to fill the vacancy.” §15660(d). Petitioner is the only “interested person” before this Court concerned about the internal affairs of this trust, so she would be appointed to serve as trustee either way. As for the instruction regarding distribution, this does not seem necessary since the distributive provisions of the trust are included in the pages provided and track what one would expect in this scenario: equal shares to all three children. It is true that the missing signature pages, Schedule A, and updated property title search raise questions as to whether there is a trust, and what assets are in the trust, but if all of the assets went by way of intestacy in the same manner (1/3 to each) then the same outcome occurs. The siblings simply need to agree in writing how they wish to proceed. If they wish to proceed through the trust, the trustee can simply secure an accepted Notice of Proposed Action and distribute without judicial involvement. Otherwise, a summary hearing will still be required.

6. **In re Berchtold Living Trust (PR12607).** Before the Court this day is the continued hearing on a trust petition to compel reporting/accounting, with possible suspension. At issue is trust administration for the better part of a decade by only one of two co-trustees, despite the statutory obligation that both must act (see §§ 15620 and 16402(b)). There are two real properties which need to be managed and/or sold. Based on this Court’s inability to extract meaningful answers to seemingly innocuous questions, the decision was made to appoint a limited purpose receiver to complete an initial inventory and accounting of the trust res, with recommendation to the Court on steps needed to conclude the administration. Due to a claimed potential conflict of interest with the Dambacher law firm, Attorney McKernan was appointed by the Court to serve as the limited-purpose receiver. Court is awaiting confirmation from the proposed receiver.

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7. **In re Hartsell Living Trust (PR12646).** No appearance is necessary. Before the Court this day is a petition to declare US Savings Bonds assets of decedent's inter vivos trust. A trial court may make a transfer of assets into a trust pursuant to §856 if the settlor(s) presently own(s) the asset in question, the settlor(s) created a trust with themselves as trustor, and there exists sufficient evidence to find by a preponderance of the evidence that the settlor(s) intended said property to be held in that trust, and failed to make the transfer by mistake, surprise, excusable neglect or innocent omission. See, e.g., *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 there is often little objection to a *Heggstad* petition, the quantum of evidence needed to prevail on an unopposed petition is said to be "fairly light" and "just enough to do equity."

Between July 11, 1990, and January 3, 1992, Katharina Hartsell and her then-husband Earl bought 150 United States Series EE \$1,000 Savings Bonds. Earl died in 1993, and reportedly left his interest in the bonds to Katharina. Without going too far afield into family law, even though the bonds were held individually ("or") rather than jointly ("and"), and Earl died just before Family Code §760 became operative, it is more likely than not that Katharina acquired Earl's separate interest in those bonds. See former Civil Code §5110. Therefore, it shall be assumed for present purposes only that whatever bonds may exist between Earl and Katharina, all shall be directed as set forth herein.

Katharina died this past April. Before her passing, she executed a Last Will and Testament which directed the executor thereof to distribute (pour over) the whole of her probate estate to the Katharina Hartsell Revocable Trust. She also executed a General Assignment by which she transferred and assigned to the Katharina Hartsell Revocable Trust all of her "interest in all tangible and intangible personal property, of whatever nature and wherever situated, include[ing] but is not limited to, bonds, promissory notes [and] savings accounts." Finally, she also executed and delivered a letter with forms to the Federal Reserve Bank hoping to move the bonds into her trust. The bonds did not actually reissue and transfer, but she tried. The forms needed to move bonds into a trust are the *FS-1851* (not "PD-1851" as Katharina stated) and a W-9; however, it is important to note that Series EE bonds cannot be reissued within one month of their final maturity, and some of the bonds were within one year of their maturity, so it is possible that the FRB decided not to bother. For present purposes, it is clear to this Court that Katharina did more than enough to prove her intent to hold her bonds in trust, and that she failed to move them into the trust by mistake, excusable neglect and/or innocent omission. She tried, much more than others do.

Petition to deem bonds an asset of the trust GRANTED.

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10:00 a.m.

- 8. Conservatorship of McLaurin (PR12661).** This is the initial hearing on a petition to establish a general conservatorship over a person with a rare developmental disability requiring extensive assistance. Petitioners include the proposed conservatee’s mother, father and “step” father; no disqualifiers or apparent conflicts exist. Court investigator will need to be appointed, and counsel will need to be appointed for conservatee though it does appear that all family members within 2 degrees will likely consent to conservatorship. Since medical records indicate a need to transition to adult care soon, Court will consider temporary letters despite the insufficiency of the Burfield letter serving as the GC-335.
- 9. Conservatorship of Wilcox (PR10600).** This is the initial hearing on a petition to establish a general conservatorship over the estate of an individual already conserved. According to the acting conservator of the person, issues have come to light regarding the conservatee’s “regular income” (ie, SSDI) which is reportedly managed by TMS through VMRC, but VMRC is not serving as the middle man anymore, and issues relating to the conservatee’s special needs trust. Court investigator will need to be reappointed, counsel for the conservatee appointed, and notice provided to the trustee of the special needs trust.
- 10. Conservatorship of Stone (PR7726).** This is a conservatorship of long-standing here in the community, in which annual accountings have generally been approved without much scrutiny. However, it recently came the attention of the Court that the annuity income stream has run dry, necessitating a hard look at the fiduciary fees, conservator stipends, conservatee charge-offs, and the like. The 17th accounting will not be approved without input from counsel for the conservatee.
- 11. Conservatorship of Sotter (PR12652).** This is the initial hearing on a petition to establish a general conservatorship over the person of an individual who is 95 years of age. Petitioners include the proposed conservatee’s daughter, son-in-law and grandson. There are no disqualifiers or apparent conflicts. Disclosure regarding Court’s affiliation with one of the petitioners. Court investigator will need to be appointed, and counsel will need to be appointed for conservatee. Since there is an indication that proposed conservatee is housed at a senior living facility, petitioners should confirm whether the facility has her in the secure wing, and if the facility is caring for her subject to a durable POA or if the facility is awaiting temporary conservatorship letters. Court does not see a GC-335 in the file, and will need that given the representation that the proposed conservatee apparently objects and may be noncompliant or a flight risk.

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12. **Guardianship of Bodle Stubbs (PR12648).** Court has received a number of declarations, statements and reports – including the court investigator’s report. Court to address status of visits and the need for adjustments. Court to discuss §3041 with bio mom and ascertain her desire for a trial on the issue of guardianship. Extend temporary if trial requested.
13. **Guardianship of Smith (PR12161).** Parties were directed to file FL-150s to enable Court to determine allocation of funding for supervision and therapy sessions. Bio dad complied. Guardians did not. Bio dad complied with submission of FL-324(P). Parties were directed to meet at park or schedule a supervised visit: no word on whether either of those occurred. Parties should be prepared to schedule a trial on bio dad’s RFO filed 04/02/2025.
14. **Guardianship of Steele (PR11943).** Before the Court this day is the continued hearing on bio mom’s petition to terminate the paternal grandmother’s guardianship over the person of a ward, age 12, which was first established in 2021. The guardian has consented to the termination. The court investigator prepared a lengthy, and detailed, report providing a well-supported recommendation to also terminate the guardianship and permit the bio parents to resume their respective roles in the child’s life. Assuming both parents appear, this Court may look favorably at the petition to terminate. There must be some understanding as to the custody allocation between the parents beforehand.
15. **Guardianship of Lima (PR12496).** Trial setting. This case is related to FL16854 (family) and FL18454 (child support). Bio dad has sole 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. Minor’s counsel (NN) has been appointed for the proposed wards. Petitioner now alleges a new round of concerns. Court investigator to be redispached, with possible referral to CWS.
16. **Guardianship of Abram (PR12633).** This is a transfer in on calendar for an initial review, submission of updated GC-251 forms, and a new court investigation report.
17. **Guardianship of Hartzell (PR11369).** No appearance is necessary. This hearing remains in error from the previous guardianship review schedule.

1:30 p.m.

18. **Marriage of Gast (FL17564).** Settlement conference.