

Department 5 Probate Notes for Friday, August 29, 2025

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8:30 a.m.

- 1. Marriage of Day and Fauci (FL18868).** This is a petition to dissolve an insolvent, childless short-term (14-month) marriage due to alleged irreconcilable differences. Although Husband indicated in his FL-120 a request to terminate his right to receive spousal support, his filed an RFO seeking “guideline” support from Wife. It was scheduled for this date in error. Wife earns \$12,000/month; Husband earns \$2,800/month (SDI) (previously \$27/hr f/t). Wife claims support is not warranted. See Family Code §§ 3600 and 4320(i); *Marriage of Gilbert-Valencia & McEachen* (2023) 98 Cal.App.5th 520, 529; *Marriage of Brewster & Clevenger* (2020) 45 Cal.App.5th 481, 503; *Marriage of Priem* (2013) 214 Cal.App.4th 505, 510. Husband needs to serve his preliminary disclosures. Need to set evidentiary hearing on spousal support RFO.
- 2. Estate of Almstrom (PR12650).** Before the Court this day is the continued hearing on a probate avoidance by-pass petition to determine intestate 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, 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)). Third, the required Inventory & Appraisal shows that the gross value of said property exceeds the statutory cap in effect when decedent died (see §13152(a)(2)). Petitioner contends that the probate referee has over-valued the property, and seeks the opportunity to challenge the appraisal. Finally, there is no evidence from which to show that the property was owned by the decedent at the time of his passing (§13152(a)(3)). It seems that petitioner will likely need to proceed with a full-fledged probate petition. Nothing has been filed since the earlier hearing.
- 3. Estate of Meadows (PR12485).** Before the Court this day is a short-set petition for final distribution. The matter was specially set on shortened notice pursuant to counsel’s representation made in open court at the §12200 review hearing that all those entitled to notice of this petition have waived that statutory period. There is no time waiver in the court file for decedent’s three biological children, which begs the question are these heirs entitled to notice? There is no question that “each heir of the decedent” is entitled to notice of the original petition seeking appointment of a personal representative and admission of the will to probate. See §8110(a). However, when it comes time for the final distribution, only (1) persons designated in a will to actually receive something and/or (2) heirs “whose interest in the estate would be affected by the petition” are expressly entitled by statute to 15 days’ notice. See §§ 34, 11601. Although decedent has three adult children who are heirs (see §44), they were not designated to receive anything in the will, nor did they have “an interest in the estate” affected by the petition for distribution itself (their interest was affected by the petition to admit the will, but not thereafter). Nevertheless, trial courts often require additional notice when it appears that known individuals have *standing* in the traditional sense. One perfect example is when a devisee disclaims or assigns an interest to a third-party, and a court requires notice to be provided to that third-party. Probate Code §1202 provides that “where the court determines that the notice otherwise required is insufficient in the particular

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circumstances, the court may require that further or additional notice, including a longer period of notice, be given.” This is one such incident, when the natural bounty of decedent’s affection (children) are disinherited in favor of an unrelated individual serving as the personal representative, and this Court has never heard from the children and is relying entirely on the representative that they received notice of the original petition and understand they have been disinherited. Absent some indication from the children, this Court intends to continue the hearing and require 15 days’ notice with satisfactory proof that the address used for the children is accurate. If the notice issue is resolved, the petition itself is proper in form and content, and the Court is prepared to grant the petition and sign an amended order which includes an express §11424 advisement.

4. **Estate of Light (PR12495).** No appearance is necessary. Before the Court is a petition to approve costs, fees, the intestate heir disclaimer and the plan for final distribution. This Court, having closely reviewed the petition and all supporting documentation, finds that the petition is proper in all respects. Court intends to grant the petition and to sign a revised order which includes an express §11424 advisement.
5. **Estate of Loflin (PR12533).** This probate action was released into the wild on 01/31/2025. 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.
6. **In re Leffingwell Trust (PR12677).** Before the Court this day is a petition to declare one real property in Jamestown, and four financial accounts at Bank of America, assets of decedent’s inter vivos trust established in 2017. A trial court may make a transfer of assets into a trust pursuant to §856 if (1) the settlor presently owns the asset(s) in question, (2) the settlor created a trust with herself as trustor, and there exists sufficient evidence to find by a preponderance of the evidence that the settlor (3) intended said property to be held in that trust and (4) 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.”

In January of 2017, decedent created an estate plan consisting of three instruments: a Last Will & Testament; an Assignment (which she called a *Comprehensive Transfer Document*); and a Declaration of Trust. She directed via the Will that “all of the rest, residue and remainder of my estate owned by me at the time of my death ... be added to the assets held in” her inter vivos trust. See Third Recital. She further declared via Assignment that she “will hold, solely and exclusively for and on behalf of such trust, any and all properties of all kinds, whether presently owned or hereafter acquired (regardless of the names by which acquired) including, without limitation bank accounts [and] real estate. All such property is hereby transferred to and the same shall be owned by such trust.” Finally, within the Trust itself, she declared her intention to “hold, solely and

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exclusively for and on behalf of such trust, any and all properties of all kinds, whether presently owned or hereafter acquired, including bank accounts [and] real estate wherever located ... this declaration shall apply even though record ownership or title, in some instances, may, presently or in the future, be registered in my individual name, in which event such record ownership shall hereafter be deemed held in trust even though such trusteeship remains undisclosed.” See Art. III.A.

There is no question that elements (2) and (3) have been met. As for the bank accounts, the statements are contemporaneous enough to satisfy element (1). As for the real property, additional information will be needed to prove element (1). As to element (4), this Court would consider proof that she placed other real properties within the trust as proof of her forgetfulness vis-à-vis the real property, or some evidence from one of her kids attesting to the fact that decedent mentioned a plan to transfer the property and forgot. This is needed because decedent had a curious phrase in her Trust at Art III.(A), to wit: “I will execute and deliver all deeds [etc] necessary to convey and register all of my assets that I choose to place in trust under this trust to be owned by the trustee(s),” meaning she left room for the possibility that she made an election not to put this in trust on purpose. As for the bank accounts, petitioner will need to provide evidence that the accounts did not have POD or designated beneficiaries attached to the accounts before they can be assigned to the trust. Court intends to continue, and petitioner presumably requires more time to gather the necessary documentation.

7. **In re Hardin Trust (PR12351).** The Court has received and reviewed the reports from the trustees and the receiver. The Court has approved the insider sale of APNS 039-090-041-000, 039-090-007-000 and 066-432-002-000 to Ariane; and APN 001-216-010-000 to Rowena. Court intends to recommend price reductions as follows: \$698,000 for APN 001-060-033-000; and \$60,000 for APN 032-220-001-000. Court intends to recommend that the trustees create a timeshare for the cabin using a fractional ownership LLC and “selling” units that can be converted to extra days of occupancy or calendar priority. All other items of personal property should be distributed within 45 days. Court intends to direct the trustees to satisfy 50% of receiver’s current invoice, reserving all rights of the parties to challenge the receiver’s billing statements for padding/duplication/etc.
8. **Estate of Mills (PR12599).** This is a petition for special administrative letters, intended solely to correct transfer deeds. Counsel reports there are no assets, corrective deeds were executed and the estate has been distributed to all parties. Counsel was invited to file a §12251 declaration so that petition can be properly dismissed.
9. **Estate of Holland (PR12327).** No appearance is necessary. This hearing was removed from calendar. There is no hearing set in this case until 10/24/2025.

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10:00 a.m.

10. **Conservatorship of Lail (PR11963).** No appearance is necessary. Before the Court is the continued hearing on what was to be a review of the 4th accounting. There is no accounting on file; however, there is a petition for substituted judgment to establish for the conservatee an inter vivos trust. This petition is set for hearing on 10/24/25. This Court is not sure why the hearing is so far out there, but there is no need for an accounting prior to this hearing so the matter will be continued.
11. **Conservatorship of Villasenor (PR9919).** This is a special review hearing scheduled *sua sponte* on information obtained by the court investigator regarding a possible change in circumstances regarding the conservatee's residence and/or living situation. Court is awaiting a report and possible APS involvement.
12. **Conservatorship of Wilcox (PR10600).** Based on a review of the court file, and the investigative report, the Court intends to find by clear and convincing evidence that the conservatee is substantially unable to manage his own financial resources or resist fraud or undue influence, and that adding estate protection to his general conservatorship is the least restrictive alternative needed for his protection, taking into consideration his abilities and capacities. Court will find that a waiver of counsel is warranted given the conservatee's inability to communicate. Court will require a full accounting of both the special needs trust and the conservatorship estate in the coming 120 days.
13. **Guardianship of Cuneo (PR12649).** This is the continued hearing on a petition to establish a guardianship over the estate of a minor (AC) set to inherit from an uncle as a result of a probate action venued in Calaveras County. An investigation is required (§1513(a)), including a determination as to petitioner's qualifications to serve in this capacity (§2650) and any potential conflicts given the joint custody requirements set forth in FL16278. According to petitioner, the biological mother – though not a petitioner – consents to the guardianship. Mother has primary physical custody of the minor, and would ordinarily participate as a co-guardian. It is unnecessary to establish a guardianship, with its incidental annualized accounting requirements, in order to deposit one check into a “blocked” account. However, if this is an investment account, rather than a blocked account, then a guardianship is indeed the proper option. That begs the question why the parent with primary responsibility for the child is not involved.
14. **Guardianship of Garcia (PR11487).** No appearance is necessary. The Court, having received and reviewed the GC-251 with attachments, 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.
15. **Guardianship of Gevock (PR12664).** This is the initial hearing on a petition by the maternal grandmother to establish a guardianship over a minor without the consent of either legal parent. There is no notice provided, and petitioner requests permission to dispense with notice to bio dad. Court investigator will need to be appointed. Minor's counsel may need to be appointed as well.

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16. **Guardianship of Webb (PR11467).** This is an annual guardianship review. Pursuant to Probate Code §1513.2(a), every year the guardian(s) shall complete and return to the court a status report (GC-251). The court clerk is required to provide a reminder to the guardian(s), along with a blank GC-251, which did occur herein on 04/18/2025. Based on the nature of the proceedings to date, this Court assumes that the guardianship is still needed, warranted and desired. Thus, the guardianship may be temporarily carried over until a report and order are completed. Since this is the third time no report has been filed, Court intends to release the investigator and charge the guardian for those costs. See §1513.1(a).
17. **Guardianship of McLeod (PR10676).** No appearance is necessary. Although the Court previously continued the hearing to inquire of a related ‘JV’ case, that further inquiry is no longer needed. Court will set annual review date for guardianship.
18. **Conservatorship of Caywood (PR8920).** This is a petition to “reestablish” an LPS conservatorship for a gravely disabled individual suffering from schizophrenia. See §5361. To reestablish an LPS conservatorship, County must first prove beyond a reasonable doubt that conservatee is "gravely disabled," ie incapacitated or rendered unable to carry out the transactions necessary for survival, as a result of a mental health disorder or severe diagnosed substance-related disorder. Thereafter, County must prove by clear and convincing evidence that (1) as a result of said disability, the conservatee is unable to properly provide for his/her personal needs for physical health, food, clothing, shelter, personal safety (the ability of one to survive safely in the community without involuntary detention or treatment) or necessary medical care (care that a medical provider determines to be necessary to prevent serious deterioration of an existing physical medical condition); (2) that as a result of said disability, the conservatee is substantially unable to manage his/her own financial resources or to resist fraud or undue influence; and (3) that there are no family, friends or others who are voluntarily willing and able to help provide for the person's basic personal needs. See Probate Code §§ 1801, 5008, 5350. The existing LPS conservatorship has already terminated by operation of law effective 08/14/25, but since the petition was filed just prior to the termination date, the petition includes no information regarding the proposed conservatee’s current whereabouts (ie, did the facility discharge the individual once the conservatorship terminated). The petition is supported by two capacity declarations, providing the required prima facie showing to support an interim order maintaining the status quo – whatever the status quo happens to be. Counsel to be appointed, and court to inquire of any time (§5350(d)) and/or jury (§1828) waivers. Court to voir dire conservatee regarding his rights and desire to be present and for a jury. See *Conservatorship of Joanne R.* (2021) 72 Cal.App.5th 1009, 1016-1020; *Conservatorship of C.O.* (2021) 71 Cal. App.5th 894, 917-919.

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1:30 p.m.

19. **Petition of “Roberts” (CV67356).** Nonconfidential petition to change last name; no proof of publication in the court file. However, petitioner provides some information that might qualify him for a waiver of the publication requirement under CCP §1277(b). Court will require DOJ report and additional information to confirm allegations provided.
20. **Petition of Hacket (CV67030).** Nonconfidential petition to change last name; no proof of publication in the court file. Since Court has no power to waive publication or its costs, and this is the third hearing, Court will be dismissing the case if proof of publication is not provided at the hearing.
21. **Petition of Mathias (CV67387).** Nonconfidential petition to change first and middle name. Procedural requirements satisfied. Vire dire and DOJ pending.
22. **Marriage of Roberge (FL17774).** Trial Day 2.