

Department 5 Probate Notes for Friday, September 6, 2024

Probate Notes are not tentative rulings. Parties and counsel are still expected to appear for the hearings unless the Probate Note specifies otherwise. Unless indicated otherwise, all parties and counsel are authorized to appear via Zoom using this link: <https://tuolumne-courts-ca-gov.zoomgov.com/j/1615813960?pwd=NTRMT0NwMDg5cmlYdzZ6VnBXWWFsUT09>. [Meeting ID: 161 581 3960; Passcode: 123456]. All matters set for hearing in Department 5 are presumptively assigned to that department for all purposes. Parties retain the right under Cal. Const. art VI §21 to decline consent to the Commissioner serving as a Judge Pro Tem by so stating clearly at the outset of the first hearing in the case. By participating in the hearing, or electing not to attend after due notice thereof, parties are deemed to have stipulated to the Commissioner serving as a Judge Pro Tem for the entirety of the case. See CRC 2.816.

8:30 a.m.

- 1. Conservatorship of Zimmer (PR12145).** This Court, having received and reviewed the recent investigative report, is prepared to find by clear and convincing evidence that a general conservatorship is required for the conservatee's protection and well-being; however, the Court is concerned regarding the conservatee's apparent non-compliance and questions whether she would qualify for a limited 5250 or LPS Conservatorship to permit proper diagnosis and medication provisions. Conservator to address concerns and whether a citation for the conservatee's personal appearance would be warranted. Court will consider appointment of counsel for the conservatee.
- 2. Conservatorship of Rutkin (PR10943).** This is a general conservatorship which has since terminated by operation of law. This was to be the hearing on the final accounting, but as yet there is no accounting on file to review.
- 3. Conservatorship of Burk (PR11964).** This Court, having received and reviewed the recent investigative report, is prepared to find by clear and convincing evidence that a general conservatorship is required for the conservatee's protection and well-being; however, the Court is concerned regarding the conservatee's apparent non-compliance and intends to pose questions regarding the status of her presumed dementia. Would the conservatee qualify for a limited LPS Conservatorship to permit proper medication provisions? Conservator to address concerns and whether a citation for the conservatee's personal appearance would be warranted. Court will consider appointment of counsel for the conservatee.
- 4. Estate of Jensen (PR12416).** Pursuant to Probate Code §8800, the personal representative of an estate is required to have on file a final Inventory & Appraisal within four months of securing Letters. In this case, Letters were issued 04/05/24. There is as yet no I&A on file.
- 5. Estate of Bridge (PR11944).** This is a petition to account, distribute and eventually close decedent's estate. A review of the petition reveals no anomalies, and in the ordinary course of events would be approved as is. However, since the Probate Code requires at least 15 days' notice for all substantive petitions and Lester did not withdraw his request for notice following the dismissal of his petition to enforce the settlement, this Court would prefer to proceed after notice has been provided to all those impacted hereby (Bruce, Lisa, Lester), and there is no proof of service accompanying the petition. See, e.g., Probate Code §§ 1042, 1260. This is particularly important in a case such as this, when there is a Breslin settlement binding all of the beneficiaries. See Probate Code §§ 9830 et seq. Counsel shall either provide the Court with proof of service on the affected persons or the court can simply continue the hearing hereon to permit notice.
- 6. Estate of Walsh (PR12140).** No appearance is necessary. The Court, having received and reviewed Petitioner's TUO-PR-125, finds by a preponderance of the evidence that good cause exists to permit additional time for completing administration of this estate. Although the existence of CV65497 qualifies as good cause, the parties are reminded that CV65497 should be resolved without delay and that, if no jury is sought, CV65497 can be transferred to this department for

Department 5 Probate Notes for Friday, September 6, 2024

Probate Notes are not tentative rulings. Parties and counsel are still expected to appear for the hearings unless the Probate Note specifies otherwise. Unless indicated otherwise, all parties and counsel are authorized to appear via Zoom using this link: <https://tuolumne-courts-ca.gov.zoomgov.com/j/1615813960?pwd=NTRMT0NwMDg5cnlYdzZ6VnBXWWFsUT09>. [Meeting ID: 161 581 3960; Passcode: 123456]. All matters set for hearing in Department 5 are presumptively assigned to that department for all purposes. Parties retain the right under Cal. Const. art VI §21 to decline consent to the Commissioner serving as a Judge Pro Tem by so stating clearly at the outset of the first hearing in the case. By participating in the hearing, or electing not to attend after due notice thereof, parties are deemed to have stipulated to the Commissioner serving as a Judge Pro Tem for the entirety of the case. See CRC 2.816.

summary resolution consistent with Probate Code §§ 1022 and 9620. A §12200 review hearing shall be set for 90 days.

7. **Estate of Thornton (PR12237).** No appearance is necessary. This was to be the §12200 review hearing, but a final petition is already on calendar 6 and set for hearing 10/18/24.
8. **Estate of Areias (PR12478).** Petitioner failed to correct the hearing date in the notice of publication, resulting in defective notice to the world at large. In addition, petitioner failed to attach the will to either DE-131. Petitioner to confirm whether creditors are known or suspected. Court reserves the right to require additional notice after colloquy.
9. **Estate of Light (PR12495).** No appearance is necessary. The Court, having reviewed this Petition for Letters of Administration with IAEA, intends to grant the petition as prayed and to set §§ 8800 and 12200 review dates.
10. **Estate of Patterson (PR12494).** Before the Court this day is a petition to determine succession to a small estate. The petition is unclear if the estate consists of the promissory note dated 01/05/11, or the deed of trust dated 04/11/11. Either way, it does appear to this Court that petitioner is really seeking a “Heggstad” petition to move one of both of those assets into decedent’s trust. Succession does not appear to be the “right” vehicle since that would require distribution on a pro rata basis to each of decedent’s heirs in accordance with Probate Code §6402, not to one individual serving as trustee. In addition, if there is to be a transfer of anything other than the promissory note itself, the Court will expect to see notice to the trustors, as well as contemporaneous proof of record ownership of the subject property and payments made on the note.
11. **In re Baker Family Trust (PR12492).** This is a §§ 15642/16062/17200 petition to compel a trust accounting, and to substitute a new trustee. Both settlors are recently deceased. Petitioner contends that the acting trustee has failed to provide notice, information, an accounting, or distribution – and seeks appointment of a named successor trustee (Jodie Moreno). No other parties have appeared in the action, despite what appears to be adequate service of the petition to the main players. See §17203. The POS for today’s proceeding is imperfect, as it did not include the list of persons provided notice vis-à-vis the *continued* hearing date. If parties appear and wish to be heard, they should be prepared to address any concerns regarding discovery and whether issues can be resolved using the summary procedures in §§ 1022 and 9620, with briefing consistent with CCP §§ 437c, 1010, 1005(b), 1005.5, and CRC 3.1306.
12. **In re Cianfrone Trust (PR12497).** No appearance is necessary. This is a §§ 15660/17200 petition to fill a vacancy left in the office of trustee. The petition is not ready for approval. The settlor passed away on 01/31/20. The only named successor trustee passed away six days later, on 02/05/20. The office of trustee has remained vacant ever since. Petitioner, while not named as a successor trustee, might qualify for appointment under Probate Code §§ 48 and 15660(d) if he can show he is in fact an interested party. However, the representation that the estate passes entirely to petitioner is inaccurate; since Jeffrey did not predecease the settlor, anti-lapse provisions (see §§

Department 5 Probate Notes for Friday, September 6, 2024

Probate Notes are not tentative rulings. Parties and counsel are still expected to appear for the hearings unless the Probate Note specifies otherwise. Unless indicated otherwise, all parties and counsel are authorized to appear via Zoom using this link: <https://tuolumne-courts-ca-gov.zoomgov.com/j/1615813960?pwd=NTRMT0NwMDg5cnlYdzZ6VnBXWWFsUT09>. [Meeting ID: 161 581 3960; Passcode: 123456]. All matters set for hearing in Department 5 are presumptively assigned to that department for all purposes. Parties retain the right under Cal. Const. art VI §21 to decline consent to the Commissioner serving as a Judge Pro Tem by so stating clearly at the outset of the first hearing in the case. By participating in the hearing, or electing not to attend after due notice thereof, parties are deemed to have stipulated to the Commissioner serving as a Judge Pro Tem for the entirety of the case. See CRC 2.816.

11801, 21110) ordinarily require that the asset pass to Jeffrey and distribute according to *Jeffrey's* estate plan, not Janis'. Court intends to continue the hearing and permit supplemental briefing to demonstrate how distribution would occur through Jeffrey, and whether additional parties are entitled to notice of these proceedings.

- 13. In re Haloski Trust (PR12490).** No appearance is necessary. This is a §§ 15660/17200 petition to fill a vacancy left in the office of trustee. The settlor passed away in 2020. The first named successor trustee declined to serve. The second named successor trustee served until her passing in 2023. The office of trustee has remained vacant ever since. Petitioner, while not named as a successor trustee, qualifies for appointment under Probate Code §§ 48 and 15660(d) based on his status as a direct beneficiary (see 4.08), his nomination to serve via a springing power of attorney for the only other living beneficiary, and his present service as the personal representative for the now-deceased second successor trustee (see PR12329). Court intends to grant the petition.

10:00 a.m.

- 14. Conservatorship of Casner (PR10398).** No appearance is necessary. The Court, having received and reviewed the interim investigative report, finds by clear and convincing evidence – largely based on the conservatee's expressed preference – that a *limited* conservatorship remains warranted for the time being, and that the conservator is acting in the conservatee's best interests. Court intends to set a review for six months, and annually thereafter as needed.
- 15. Guardianship of Hernandez (PR11351).** No appearance is necessary. This was to be the initial hearing on a petition to terminate a guardianship, with opposition filed. In conjunction with the opposition, the guardians filed a document entitled "withdrawal of consent" to a Commissioner. In order to effectively withdraw one's stipulation to court-appointed temporary judge acting as Judge Pro Tem, the party must file with the Presiding Judge an application or motion "supported by a declaration of facts establishing good cause for permitting the party to withdraw the stipulation." A unilateral filing is not the procedure. Parties to advise if they wish to have said filing treated as a peremptory challenge under CCP §170.6 in order to effectuate their desired reassignment.

10:30 a.m.

- 16. Guardianship of Ashlock (PR10926).** 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 is serving the ward's best interest. Court intends to set annual review date.
- 17. Guardianship of Marton (PR11333).** 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 is serving the ward's best interest. Court intends to set annual review date.

Department 5 Probate Notes for Friday, September 6, 2024

Probate Notes are not tentative rulings. Parties and counsel are still expected to appear for the hearings unless the Probate Note specifies otherwise. Unless indicated otherwise, all parties and counsel are authorized to appear via Zoom using this link: <https://tuolumne-courts-ca-gov.zoomgov.com/j/1615813960?pwd=NTRMT0NwMDg5cnlYdzZ6VnBXWWFsUT09>. [Meeting ID: 161 581 3960; Passcode: 123456]. All matters set for hearing in Department 5 are presumptively assigned to that department for all purposes. Parties retain the right under Cal. Const. art VI §21 to decline consent to the Commissioner serving as a Judge Pro Tem by so stating clearly at the outset of the first hearing in the case. By participating in the hearing, or electing not to attend after due notice thereof, parties are deemed to have stipulated to the Commissioner serving as a Judge Pro Tem for the entirety of the case. See CRC 2.816.

18. **Guardianship of Cassettari (PR11440).** 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 is serving the ward's best interest. Court intends to set annual review date.
19. **Guardianship of Sanchez (PR11572).** 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 is serving the ward's best interest. Court intends to set annual review date.
20. **Guardianship of Madden (PR11827).** 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 is serving the ward's best interest. Court intends to set annual review date.

1:30 p.m.

21. **Petition of E.C. (CV66216).** Confidential proceeding to change name.
22. **Estate of Trevethan (PR12491).** This is an intestate spousal petition involving APN 046-165-019. It is petitioner's obligation, per §13651, to provide all of the information needed to the Court to make the requested determination. Although the supplemental papers now include a copy of the deed for the subject property, that deed specifies that decedent was unmarried at the time in 2018. Since the marriage certificate was from 1986, and there was no mention of the surname "French" belonging to petitioner, the Court will require a full voir dire of petitioner. As noted, if the property was his separate property, an inquiry under Family Code §770 and Probate Code §6401 is required – assuming the marriage remained valid through death. Despite the waiver of notice and consent, this Court will need to hear from the children.
23. **Mejias v. Weaver (FL18502).** DVRO court trial.