

## Department 5 Probate Notes for Friday, October 24, 2025

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### 8:30 a.m.

- 1. Estate of Jones (PR12689).** This is the initial hearing on a probate avoidance by-pass petition to determine intestate succession to a decedent's purported primary residence. The petition cannot be approved in its current condition. First, "notice of the hearing shall be given as provided in Section 1220 to each of the persons named in the petition" (§§ 13151(b) and 13153) and the court file does not include and proof thereof. Although proof can be made "to the satisfaction of the court at" the scheduled hearing (§1260), other issues remain. Second, the petition must contain "facts upon which the petitioner bases the allegation that the described real property was the decedent's primary residence" (§13152(a)(3)). There are no facts provided in the petition, and in fact no Attachment 11 at all. Third, the petition must contain proof that the residence was "property of the decedent" at the time of her passing (§§ 13152(a)(3), 13154(b)(4)), and yet the petition only establishes that the property was owned by the decedent in 2022. Finally, petitioners failed to comply with TCSC Local Rule 5.06.0.b., requiring the submission of complete and accurate proposed orders. Court intends to continue the hearing a few weeks to permit the petitioners time to cure the aforementioned defects.
- 2. Estate of John Walsh (PR12140).** This is a probate action, currently encumbered by a related civil dispute (CV65497) over real property inventoried in the decedent's probate estate. The dispute involves equitable ownership of certain real property located on Lynn Lane here in Sonora. The property was owned by decedent, who passed in May of 2021. Seven months after his passing, decedent's non-relative live-in caregiver Christi lodged with this Court an instrument purporting to be John's Last Will & Testament (see PR12029) – created one week before his passing, leaving his entire estate to Christi. Christi never commenced probate proceedings. However, in July of 2022, decedent's brother James did commence this probate action via *intestacy* (asserting his own 25% heirship), seeking appointment as administrator. Given the passage of time, this Court required waivers/nominations from decedent's other siblings before appointing James as administrator, completely unaware that Christi had lodged with the Court an instrument purporting to be decedent's will. There was no notice to, or appearance by, Christi – and James never disclosed to this Court the existence of a related action (PR12029), despite the statewide requirement to do so (see CRC 3.300). In March of 2023, James passed away (see PR12267), causing decedent's sister Caroline to step into his place as administrator. Although there is no record of Caroline giving Christi notice of the ongoing proceedings in decedent's probate, Christi appeared on 07/21/2023 and informed the bench officer that decedent had a will leaving everything to her. Despite this revelation, the bench officer issued Caroline letters to proceed via intestate administration. Immediately thereafter, Christi filed a civil action (CV65497) seeking damages and equitable ownership of the subject property based on a myriad of theories – most notably a promise by decedent to gift her the residence if she agreed to forego wages and assist him around the house for the balance of his life. The civil action did not seek specific performance of the proffered will, but the will was certainly evidence of the claimed promise. Three weeks later, Caroline filed an unlawful

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detainer action against Christi, seeking to have her removed from the residence (see CVL65554). Christi moved for a stay in the UD action, which in this Court's mind was a slam-dunk winner. That motion was denied. It immediately proceeded to trial. The estate was awarded possession – though no record exists as to whether the Court considered the validity of the will as evidence of possessory rights. Thereafter, numerous friends of Christi filed claims for possession, all of which were summarily rejected at a hearing on 12/26/2023. The subsequent request for a stay of eviction was denied, effectively ending the UD action in favor of the estate. Meanwhile, the civil action has been plodding along, with a trial currently set for April of 2026 in the same department which handled the UD case.

With at primer in mind, it should come as little surprise that that Court does not intend to grant Caroline's recently-filed petition for extraordinary fees and costs. Although this Court is certainly empowered to do so when (1) it appears likely that administration of the estate will continue for an unusually long time; (2) payment will benefit the estate or the beneficiaries of the estate; or (3) other good cause is shown (see Probate Code §10832), the request for an interim distribution to the lawyers of \$60,000 (> 10% of this estate) is unsupported for two reasons. First, there was no notice provided to Christi about this request – which seems an obvious ethical obligation under the circumstances. Second, although Christi is apparently not sophisticated enough to actually commence a probate action to have decedent's proffered will tested for admission, and too stubborn to hire a lawyer, this Court is not ethically authorized to turn a blind eye to the fact that Christi claims a testate right to 100% of decedent's estate – not just the residence. If the will is ever proven to be valid, all the money spent by Caroline trying to put Christi on the street will not be payable from the estate. These parties would be better served trying to settle their differences rather than forcing the litigation machinery against a self-represented individual who, at day's end, may be taking the entire estate, plus. For now, nothing from this estate will be distributed until the petition for final distribution is approved.

- 3. Estate of Wooldridge (PR11962).** Before the Court this day is the petition for final distribution of what would come to be one of the more complicated estate proceedings. This proceeding went from non-probate by-pass (defective spousal petition which exceeded the statutory cap and falsely denied the absence of a will), to full testate probate, but then a will contest challenging seeking to convert the action to intestacy (by that undisclosed spouse who secured her status very close in time to when the testator passed).

Petitioner first alleges that the putative spouse should be denied any inheritance under the will based on her unsuccessful will contest. A will contest is a challenge to the validity of a document purporting to be decedent's last will and testament (or a codicil). The challenge may be made by any interested person either before admission of the will to probate (Prob. Code §§ 8250-8254) or within 120 days of when the will was admitted as a revocation thereof (Prob. Code §§ 8270-8272). The grounds for challenging a will are the same whether the challenge is made before an order for probate, or after. The key difference, however, is this: before the will

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is admitted, the proponent has the burden of establishing due execution and validity; but once a court admits the will to probate, the subsequent challenger bears the burden of *disproving* competence and/or due execution. It is by most accounts a heavier burden given the various statutory presumptions. See *Estate of Ben-Ali* (2013) 216 Cal.App.4th 1026, 1036. On 12/06/21, Keelie filed an “objection” to the will admitted to probate, claiming that the will was a forgery. There is little doubt that Keelie’s objection constituted a direct challenge to the will via pleading by claiming that the will was a forgery subject to revocation and not entitled to admission. See Prob. Code §§ 8270 and 21310(b). There is also no question that Keelie lost that challenge, this Court having heard evidence and decided thereon that the will was indeed authentic. Since the will includes a no contest clause, and since Keelie brought forth an unsuccessful challenge, the question now posed is whether Keelie’s devise should be forfeited. Petitioners ask this Court to reach the next question as to whether the no-contest clause in the will should be enforced. (As a technical matter, petitioners did not file a petition to enforce the no-contest clause in the will, but having asked this Court to make that determination, the post-trial brief filed 07/21/22 qualifies as a *de facto* petition.) While the burden of proof was on Keelie to demonstrate grounds for revocation of the order admitting the will to probate (ie, the alleged forgery), the burden now rests with petitioners to demonstrate by a preponderance of the evidence that Keelie’s challenge lacked probable cause. In this context, petitioners must show that no reasonable person in Keelie’s shoes (possessed of facts known to Keelie) would believe, as of 12/06/21, that with additional discovery there was a “reasonable likelihood” this Court would actually grant the relief she was seeking (to wit, revocation of the order admitting the will to probate based upon a finding that the will was inauthentic). See Prob. Code §§ 21311(a)(1), 21311(b); in accord, *Johnson v. Greenelsh* (2009) 47 Cal.4th 598, 600-601; *Meiri v. Shamtoubi* (2022) 81 Cal.App.5th 606 at \*6; *Key v. Tyler* (2019) 34 Cal.App.5th 505, 531; *Urlick v. Urlick* (2017) 15 Cal.App.5th 1182, 1198; *Doolittle v. Exchange Bank* (2015) 241 Cal.App.4th 529, 539-543. Keelie’s “evidence” of forgery, as set forth in her written objection, was limited to the form of the decedent’s signature (using the middle initial) and her impression that the devise to her was inconsistent with prior oral promises. As to the former, without an expert or numerous handwriting exemplars, the signature on the wedding license is similar enough to the one on the Last Will to conclude by a preponderance of the evidence that the same person placed both. Keelie has not presented sufficient evidence from which to *negate* the authenticity of the signature. As for the devise itself, nobody disputes that decedent gave Keelie the “1983 modular trailer” (which is presumably the mobile home), which appears to be the gist of the pre-mortem oral promise. Keelie does not clearly state that decedent promised to give her the land beneath the home, but given her surprise about an eviction, it seems that the gift of a mobile home is meaningless without a guaranteed place to put it (ie, lease, or life estate). An oral promise of a testamentary gift of real property is not enforceable absent a material change in position resulting in substantial hardship and unconscionable injury. See *Monarco v. Greco* (1950) 35 Cal.2d 621, 623-624; *Smyth v. Berman* (2019) 31 Cal.App.5th 183, 198-199; *Garcia v. World Savings, FSB* (2010) 183 Cal.App.4th 1031, 1044; *Porporato v. Devincenzi* (1968) 261 Cal.App.2d 670, 678-679. Since Keelie was already living there, and required to care for her

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spouse, there is no basis for enforcing any oral promise to give her land. On balance, it seems that Keelie's challenge was not made with any reasonable expectation that this Court would ultimately find that the will was a forgery. As such, it seems she lacks probable cause to bring her challenge, and as such has forfeited her right to receive – as a “beneficiary under the will” – the mobile home and its contents. That does not end Keelie's rights to decedent's property.

Separate from being a beneficiary, Keelie also has legal rights as a spouse. A spouse claiming a statutory right to an inheritance, in derogation of the will, may do so as a “pretermitted heir” because pretermitted heirs take in spite of a probated will. Since we know that decedent married Keelie after the will was executed, if this Court finds that he “failed to provide” for his spouse, the will is revoked by law to the extent of Keelie's statutory share – which is (1) decedent's one-half interest in community/quasi-community property plus (2) the share of decedent's separate property that the spouse would have received if decedent had died intestate, up to 50% of decedent's separate property. See Prob. Code §21610. Since the marriage was of such short duration that no community property likely exists, this becomes a question of whether Keelie is entitled to 1/3 of decedent's separate property, ie, the estate. See Prob. Code §6401(c)(3). The spousal pretermittance statutes are designed to protect against decedent's *inadvertent* failure to provide for a spouse, and as such an omitted spouse is not entitled to claim a statutory share against decedent's will if it is shown that the omission was *not* inadvertent. In other words, a spouse cannot claim as a pretermitted heir if (1) decedent's failure to provide for the spouse was intentional and that intention appears in the will; or (2) decedent provided for the spouse via non-probate transfer, and the intention that the transfer be in lieu of a devise is evident from the totality of the circumstances. See Prob. Code §21611; in accord, *Estate of Will* (2009) 170 Cal.App.4th 902, 907; *Estate of Katleman* (1993) 13 Cal.App.4th 51, 60-61; *Estate of Shannon* (1990) 224 Cal.App.3d 1148, 1153; *Estate of Paul* (1972) 29 Cal.App.3d 690, 695; *Estate of Bridler* (1958) 165 Cal.App.2d 486, 488. In this instance, decedent made a gift to Keelie of the mobile home and its contents. Without regard to the value of those assets (inasmuch as no inventory or appraisal has been made), the specific devise to her “as girlfriend” ought to be viewed as a provision to Keelie “as new wife” since it is not the status that dictates the gift for testate purposes. Decedent made a testamentary gift to his spouse, albeit at a time when she was “just the girlfriend.” In addition, this Court has already found via the §850 petition that Keelie helped herself to \$50,000.00 in personal property items, this could easily qualify as a non-probate transfer. Thus, the evidence suggests that Keelie “as spouse” was not inadvertently omitted because she was gifted close to \$75,000 – which is roughly 1/3 of the estate (not counting for the gain realized by petitioners' sale efforts).

Even if Keelie establishes that the devise she received “as girlfriend” was materially less than what she would have received “as spouse” and that she was omitted “as a spouse,” Keelie has other concerns. Pursuant to Probate Code §21611(d), an unintentionally omitted spouse is not entitled to any intestate share if decedent was a dependent adult and Keelie was his care custodian, unless she can prove “by clear and convincing evidence that the marriage was not the

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product of fraud or undue influence.” This represents a fairly high bar to overcome given the timing of everything, the choice to marry “in confidence,” the obvious interpersonal struggles between the children and Keelie, and the age disparity. If one’s life is short, and they desire to marry someone before their time is up, great – but why do it in secret then? Of course, decedent needed a minimal degree of testamentary competency to create a will directing his assets to his children rather than his spouse, and that is the same degree of capacity needed to marry. However, the burden of proof is different, and this record does not support that burden. As such, Keelie is not entitled to a 1/3 share as a pretermitted spouse.

This Court has carefully reviewed the billing records for counsel relating to the extraordinary services rendered on behalf of the estate to safeguard the assets against Keelie’s various challenges, and this Court finds that those fees and costs are reasonable. This was a difficult case for counsel, involving three separate evidentiary hearings just to keep the probate estate intact. On top of that, the gain on sale was impressive. Counsel is well deserving of the fees requested. This Court intends to grant the petition as is.

4. **Estate of Cordero (PR12627).** Review hearing to determine whether parties here and in related case PR12629 will be working things out.
5. **Estate of Elam (PR12629).** See #4.
6. **Estate of Areias (PR12478).** Before the Court this day is a petition to approve the fees and distribution plan. In what started as an ordinary probate case, much of the administration was consumed with resolving a claim by a devisee who claimed that the holographic interlineation line-out of her name (aka, disinheritance) was either a fraud or ineffective. A successful settlement conference on the day of trial put the issue to rest, but left open some concerns that now impact the petition for distribution. For example, that devisee’s share is noted in the petition, but her reduced percentage was in exchange for an agreement that the estate would also cover her legal fees to date, which is not reflected in the proposed distribution. Moreover, Sheri’s attorney was not noticed on this petition, and he has a right to notice. Also, there is no accounting waiver from Sheri on record, and this Court rejected petitioner’s application for an order relieving her of the accounting requirement. There is a reference to repair work done at the property before it could be sold (for a loss), but it is unclear to this Court whether petitioner is asking for personal reimbursement of those costs or for an order allowing those costs as part of the administration. If the former, this Court will require some evidence as to how those costs benefitted the estate given that the property as sold for a loss and petitioner is seeking a statutory fee for her own service as administrator. Finally, there is no proposed order, so this Court cannot tell what the proposed distribution amounts actually are.
7. **Estate of Hatler (PR12449).** Before the Court this day is a petition to establish, then fill, a vacancy in the office of executor. “The person named as executor in the decedent's will has the

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right to appointment as personal representative.” §8420. That person was, and is, decedent’s daughter Lesa Magney. She, however, wishes to resign for personal reasons. Although an executor is free to resign for any reason upon reasonable notice to the Court and interested parties, he or she remains liable for administrative efforts to date “until settlement of the accounts of the personal representative and delivery of all the estate of the decedent to the successor personal representative.” §§ 8520, 8525. Normally a resigning personal representative shall have only 60 days to prepare the hand-over accounting. §8252(b). When a vacancy in the office occurs, a successor must be named. The first priority goes to any other person “named as executor in the decedent’s will.” §8420. That person was Christopher, who declined. Since there are no other persons expressed designated in the will, the Court must look to whether the testator granted the nominees the power to designate their own alternative (§8422), but not such power is included in the will. The next order is to consider whether the testator intended to name another, but inadvertently failed to do so (§8421). Since the testator only had three devisees, and he named two of them to serve as executors, this Court easily concludes that had decedent been asked to name a third he would have named the third devisee (Jeremy), who just happens to be the individual offering to serve as successor *executor*. Although §8440 provides that Jeremy could be appointed to serve as an administrator with will annexed instead of a successor executor, as an ordinary administrator he might have to deal with future priority issues (§8461), alleged conflict of interest concerns (§8465(d)(1)), and mandatory resignation if he moves out of state (§8465(f)).

8. **Estate of Palombi (PR12625).** This is the §8800 review hearing. On 05/23/2025, petitioner filed a partial I&A. Hopefully petitioner is getting close to a final. Court intends to continue the hearing 30-45 days if petitioner needs additional time to complete.
9. **In re Ylimaki Family Trust (PR12370).** Ex parte application to specially set a hearing on objections to the accounting filed by the successor trustee. Court needs an update on trust administration and whether any disbursements are anticipated. Hearing can be scheduled for early Spring.
10. **In re Theresa Matz Trust (PR12569).** This is a petition involving the validity of a trust, accountings, elder abuse, removal and surcharge - to name a few central concerns. The trustee has since filed a written objection. The parties shall meet and confer and be prepared to advise the Court as to the anticipated scope of discovery needed (§17201.1), whether the parties will agree to use verified pleadings, sworn declarations and deposition transcripts (§1022) in lieu of live testimony for non-essential portions of the case. Parties had indicated that settlement might be in the works.
11. **Estate of Navarro (PR12681).** This is the initial hearing on a probate petition. Although petitioner is a self-represented individual, the number of errors and omissions with this petition make it difficult to navigate. To start, on Page 1 the petition indicates probate of a will, and a

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request for appointment as executor, but on Page 2 decedent is said to have died without a will, and a request is made for appointment as administrator. No will is attached. Other concerns include, but are not limited to, the following: there is no proof of publication; there is no proffer or waiver of bond; paragraph 8 does not describe how the others are related to decedent; there is no indication whether this is a primary or ancillary probate, and if the former why a by-pass was not considered; there is no non-resident statement; petitioner did not supply the required duties confirmation; there is no notice or proof of service accompanying the petition; and no proposed orders or letters lodged. At this juncture, the Court is tempted to dismiss the petition outright so that a proper petition can be filed to start this process on the right footing.

12. **Estate of Holland (PR12327).** This should have been as a garden-variety probate case. In May of 2010, John Holland (hereinafter “decedent”) made a Last Will & Testament directing that the whole of his estate, including “belongings, properties and bank accounts,” go entirely to his wife Francine. Six months later, decedent made a new Last Will & Testament directing that the whole of his estate, including “belongings, properties and bank accounts,” be divided equally between his wife and three adult children (25% each). He died in September of 2022. One year later, his adult daughter Michelle filed a petition to have the 2<sup>nd</sup> will admitted to probate, and to have all four devisees appointed to serve as co-executors (as decedent wanted). The petition indicated that decedent’s probate estate was worth roughly \$10,000 – which begged the question why anyone would file any petition for probate at all. This is where garden-variety turned south.

In addition to her petition, Michelle filed a creditor claim *in the estate* accusing decedent of pilfering \$1,000,000 from the Holland Family Trust – which Michelle claimed to be a beneficiary of. Of course, this could have been a separate §§ 850/17200 petition against the successor trustee of the Holland Family Trust, and would not make sense as a creditor claim unless decedent had an estate that actually included those funds and it was a question of who should get them. Nevertheless, the creditor claim gave Michelle the opportunity to propound broad discovery under the guise of trying “to ascertain the nature and extent of decedent’s assets.” Michelle caused to be issued numerous subpoenas to financial institutions, most of which Francine objected to. This Court allowed Michelle some of that discovery, the results of which are unknown (but apparently laid out in the “pending” motion for summary adjudication).

What needs to happen at this juncture is for the parties to declare:

- 1) Is there going to be a will contest, or will the parties concede that the November will is entitled to probate?
- 2) Assuming we are dealing with the November will, will the parties reach an agreement as to who will serve as executor(s), or does that require a hearing?

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- 3) Once we have a will admitted, and a personal representative at the wheel, an I&A can be filed – at which time the Court can be in a better position to determine whether dismissal under §12251 is warranted.

Although Michelle has a pending motion to appoint a receiver, such provisional relief is only warranted when there is a genuine concern about estate property being squandered, wasted or lost. It is not the receiver's job to investigate and marshal the estate assets, which appears to be the goal behind Michelle's request. Moreover, Francine is correct that a receiver is premature without a personal representative at the wheel. Instead, if the parties are amenable, this Court would be willing to consider appointing a neutral to serve *as the personal representative* and bring clarity to this matter once and for all (provided that an arrangement for extraordinary fees is established at the outset).

13. **In re Rebero Trust (PR12564).** This is a petition for a trust accounting, to contest the validity of a trust restatement, and to confirm pre-existing iterations of the subject trust from 2011 and 2014. The trustee has responded and objected. Since then, the parties have apparently been working toward a resolution. Parties to advise whether this matter can be resolved using the summary dispute resolution procedures (§§ 1022, 1046, 9620) with ordinary briefing (CCP §§ 437c, 1010, 1005(b), 1005.5, and CRC 3.1306). See *Dunlap v. Mayer* (2021) 63 Cal.App.5th 419, 426. Parties to advise anticipated scope/duration of discovery and when the matter will be ready for trial. Parties have advised that settlement appears to be in the works.

**10:00 a.m.**

14. **Marriage of Anderson (FL12701).** See #19.
15. **Conservatorship of Wright (PR9958).** Although an updated report is expected soon, the Court, having received and reviewed the 2024 investigative report, intends to find by clear and convincing evidence that a conservatorship of the person remains necessary, but that the time has come to start exploring the option of a limited conservatorship given what appears to be a high degree of self-sufficiency and the need to have a succession plan in place given the untimely passing of one of the co-conservators. A VMRC report would be of assistance. Court may need to set review hearing for 60-90 days.
16. **Conservatorship of Lail (PR11963).** Court is still waiting for 4<sup>th</sup> accounting. Petitioner has a motion for substituted judgment on file, seeking permission to establish an irrevocable inter vivos trust recognizing only three of his kin. Although this reasonably matches his 2006 will, and a trust is certainly warranted, this Court has some question as to whether the past 19 years produced any change of heart warranting additional trust beneficiaries

## Department 5 Probate Notes for Friday, October 24, 2025

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.

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17. **Guardianship of Le Pelley (PR12314).** No appearance is necessary. The Court, having received and reviewed the GC-251, intends to find by a preponderance of the evidence that the guardianship remains necessary and convenient, and that the guardians continue to serve the ward's best interests. Court intends to set annual review hearing date.
18. **Guardianship of Mathiesen (PR12697).** This is the initial hearing on a petition to establish a guardianship. There is no consent from bio parents. Court investigator will be appointed.
19. **Guardianship of Anderson (PR12690).** This is the continued hearing on a petition by the aunt of a child (age 12) to establish both a temporary and a permanent guardianship based upon allegations that both parents are presently unfit. The petition itself is incomplete, as there is no nomination form, no consent form, no UCCJEA declaration, and no GC-210(CA) attachment. Petitioner alluded to recent CWS involvement. There are related matters: JV7685, FL12701, FL14643. Father just secured via TECO a hearing in the family case with travel restrictions and an order requiring proof of enrollment in school. Court investigator already appointed, and report is expected to be on file soon. Bio dad has filed papers here and in related family case.

**1:30 p.m.**

20. **Guardianship of Lima (PR12496).** Trial Day 3.
21. **Marriage of Royce (FL15007).** Review of chambers conference (confidential).
22. **Riley v. Fields (FL18907).** Review status re VDOP judgment set aside (confidential).