

Department 5 Probate Notes for Friday, October 25, 2024

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8:30 a.m.

- 1. Estate of Williams (PR12292).** This probate action was released into the wild on 08/23/2023. Pursuant to Probate Code §12200, petitioner had 12 months to file either a petition for distribution or a status report explaining the need for additional time to complete the administration. A review of the court file reveals neither. Petitioner to advise.
- 2. Estate of Bettridge (PR12404).** This probate action was released into the wild on 04/04/2024. Pursuant to Probate Code §8800, petitioner had four months to prepare and file a final Inventory & Appraisal. At the last hearing, petitioner advised that an §850 petition was contemplated in order to complete the marshalling of estate assets. A review of the court file reveals neither the I&A nor the §850 petition. Petitioner to advise.
- 3. 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.
- 4. Estate of Gonzalez (PR12273).** This is a petition for distribution of decedent's intestate estate, coupled with approval of the final accounting and allowance of fees. While the Court is pleased with the effort made by petitioner as a self-represented individual, the use of a "form" petition found online leaves certain questions unanswered. At the last hearing, petitioner was instructed to file a declaration explaining in detail how title to the vehicle and the residence (including the loan) will be transferred out from the decedent's name before any discharge takes place. Petitioner must confirm whether she intends to waive statutory fees. Estate can be closed but discharge is not an option until the above is resolved.
- 5. Estate of Chapin (PR12286).** This probate action was released into the wild on 07/28/2023. Pursuant to Probate Code §12200, petitioner had 12 months to file either a petition for distribution or a status report explaining the need for additional time to complete the administration. A review of the court file reveals neither. Petitioner to advise.

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6. **Estate of Schneider (PR12489).** This is a spousal property petition not yet ready for approval. Pursuant to §13650(a), a petition of this nature may be filed by the surviving spouse or the spouse's "personal representative." Although the term "personal representative" is not defined therein, that term is generally understood to mean "executor, administrator, administrator with the will annexed, special administrator, successor personal representative, public administrator acting pursuant to Section 7660, or a person who performs substantially the same function under the law of another jurisdiction governing the person's status" Probate Code §58(a). In other words, if the surviving spouse is alive and competent to manage financial affairs, the petition must be filed by the surviving spouse. The pending petition here was filed by Robert Douglas Hinchliffe – who purports to be a "personal representative" but offers no facts from which to make such a finding. This Court would recognize a power of attorney created by Elizabeth in favor of Robert, or disclaimers/nominations from decedent's natural kin (William and Mary). As a separate concern, petitioner has failed to provide this Court with "the facts upon which the petitioner bases the allegation that all or a part of the estate of the deceased spouse is property passing to the surviving spouse" (§13651(a)(3)) because the petition provides no evidence from which to find that decedent *presently* owns the subject property APN 062-050-047-000. This is a prerequisite given the conclusive nature of any such order hereunder. See §13657.
7. **Estate of Pittman (PR12285).** This is a petition for allowance and final distribution. The Court, having received and reviewed the petition, concludes that the petition is very close to being approved as is. There are two concerns. First, what came of the 2015 Subaru utility vehicle valued at \$16,800.00? Although Para 18 states that it was sold, there is no substantive explanation provided. Second, did petitioner already reimburse himself for the estate expenses set forth in Exhibit D? Although petitioner does not state that directly (see Para 22) his splitting of the estate 50/50 suggests he is waiving reimbursement for those. Counsel and petitioner must explain these two items.
8. **Estate of Johnson (PR12510).** This is a petition for an ancillary proceeding for transfer of local real property appendant to a Nevada probate. Petitioner herein has standing to seek appointment based upon the declination to serve by the first nominee in the will. See NRS 136.070, 138.010. Although the notary attestation (page 26) is supposed to appear on the same page as the subscribing witness affidavit (page 25), the minor anomaly can be overlooked. See NRS 133.050. The only non-waivable anomaly is the requirement that the nonresident personal representative file a permanent residence attestation (see CA probate Code §8573. In addition, while the will contains a Nevada choice of law, a California court may require a bond "notwithstanding any other provision of this chapter and notwithstanding a waiver of a bond." §8571. Since the other devisees are to receive a percentage of the estate balance after costs (see Sec. 3.01), this Court will hear from counsel on the topic of a bond before making any such order.

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9. **Estate of Rodgers (PR12291).** No appearance is necessary. This is a petition for final distribution to three intestate heirs, one of whom has since passed away leaving an intestate estate of her own. Although the date of valuation for assets subject to a small estate distribution is date of death (see §13052), the difference in value for the residence is not enough to pull Gogi's share outside the small estate boundaries, especially since the vehicle does not count (§13050(b)(1)). The affidavit procedure for the small estate is approved. The request for reimbursement of expenses to the petitioner is approved. The request for statutory fees to the attorney is approved (although this Court calculates the statutory fee slightly higher, at \$6,704.72). Court intends to enter order.
10. **Estate of Nichols (PR12411).** No appearance is necessary. The Court, having received and reviewed petitioner's motion to set aside the order of dismissal, finds by a preponderance of the evidence that the dismissal was sufficiently caused by counsel's inadvertence, mistake and/or excusable neglect, and that relief is warranted. The order of dismissal will be set aside, and the petition – now having been published – will be approved. Court notes that the original will is still not in PR12411, but rather in PR12454. The error will be corrected on this end. Court intends to sign order, issue Letters and set §§ 8800/12200 review dates.
11. **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 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, does indeed qualify for appointment under Probate Code §§ 48 and 15660(d) because he has, since the initial hearing hereon, demonstrated to this Court's satisfaction that he is one of only two interested parties. However, the representation that the estate passes entirely to him is not being decided at this juncture since there may be facts in dispute regarding the existence of any unreasonable delay in distribution to Jeffrey. Either way, this Court is satisfied how distribution would occur through Jeffrey and that no other parties are entitled to notice of these proceedings. Court intends to grant the petition.

10:00 a.m.

12. **Conservatorship of McVey (PR12301).** Review hearing with assistance of counsel to determine if graduation to a limited conservatorship is warranted.
13. **Guardianship of Smith (PR12161).** The Court is awaiting an updated GC-251.

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14. **Guardianship of LePelley (PR12314).** 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 guardians are serving the ward's best interests. Court intends to set annual review date.
15. **Guardianship of Lima (PR12496).** This is a petition by the maternal grandmother to secure a non-consensual guardianship over two children – one with a recent 5150 hold. Proposed wards are of age to be heard (§1514(e)(2)). Biological father objects, and notes that he has sole physical and legal custody in related dissolution action (FL16854). Court to address heightened burden for petitioner under §3041. Court to await receipt and review of investigative report. Consider coordination of this and family case here or in D.2. Bio mom has no visits allowed in related family case due to drug use.
16. **Guardianship of Christian (PR10716).** The Court is awaiting an updated GC-251.

1:30 p.m.

17. **Marriage of Kendall (FL17333).** Reserved for Day 3 of dissolution trial.