

Department 5 Probate Notes for Friday, February 9, 2024

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8:30 a.m.

- 1. Conservatorship of McClintock-Cole (PR12057).** This was to be the hearing on the 1st accounting, covering the period 05/05/22 – 05/04/23. Although §2620 does not prescribe the time period in which the conservator is to “present the accounting of the assets of the estate of the conservatee to the court for settlement and allowance,” (nor does CRC 7.575 or TCSC Rule 5.17.1), the ordinary rule of thumb is four months. The accounting is tardy. This court is aware that on 12/08/23 the main asset of the estate (the motorhome) was declared abandoned in exchange for a waiver of all arrears/costs associated therewith. As such, future accountings might be waived (CRC 7.575(f)) but this Court still needs an initial up-to-date accounting (05/05/22 – 02/01/24), even if it is merely in summary format. Petitioner to advise.
- 2. Estate of Harvey (PR12355).** No appearance is necessary. At the hearing on 01/19/24, this Court identified a number of concerns regarding the petition for probate. Nothing has been filed since then to address, let alone cure, those concerns. Matter continued to 03/01/24 at 8:30 am. All papers to be considered in advance of the hearing are to be filed and served no later than 02/20/24.
- 3. Estate of King (PR11586).** Court requires an update on the civil action in Merced, as trial was to commence in November and there is no 12201 report for consideration. Petitioner to address.
- 4. Estate of Coane (PR12339).** No appearance is necessary. Although petitioner was unable to secure a statement from the subscribing witness (or anyone with personal knowledge) that the proffered photocopy accurately represents the terms set forth in the original (per *Lauermann v. Superior Court* (2005) 127 Cal.App.4th 1327), the email exchange with the subscribing witness will suffice for present purposes. Petitioner has adequately rebutted the destruction presumption with the new declaration, the trust instrument, and the all-important intestate vs. testate chart (showing that petitioner has no incentive to push for testacy). See §§ 6120(b), 6124; *Estate of Trikha* (2013) 219 Cal.App.4th 791. Petition will be granted barring objections at the hearing. Court to set §8800 and §12200 dates. And yes, the new commissioner is “very meticulous” but that precision inures to everyone’s benefit.
- 5. Estate of Richesin (PR12136).** At the hearing on 12/01/23, petitioner advised that the parties were trying to liquidate personal property before filing the petition to close the administration. Nothing has been filed since then to inform this Court as to the status. Petitioner to address.
- 6. Estate of Rodgers (PR12291).** No appearance is necessary. A final I&A is on file.
- 7. Petition of Lumsford, In the Matter of Ylimaki Trust (PR12370).** Although there is no response yet on file from Respondent (see §1043), the petition to suspend powers of the current acting co-trustees in favor of a neutral temporary trustee is not ready for approval. There are insufficient averments relating to §§ 15620, 15622, 15642(b), 16012 and/or 16013. Without those, the Court might entertain appointment of the proposed fiduciary to serve as a third trustee to break deadlocks

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and ensure that trust administration is moving along in an orderly fashion. See §17206 and *Copley v. Copley* (1981) 126 Cal.App.3d 248, 288; *Winter v. Winter* (2018) WL1045169 at *6-7; *Stephens v. Johnson* (2001) WL1243957 at *7-8. Parties to advise whether this matter 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. If not, parties to select trial date(s), and to advise whether either party is of the opinion that Cal. Const. Art. 1 §16 provides any right to a jury regarding any factual dispute involving a question of law herein. See, e.g., §§ 825, 17006. Respondent to advise when a response will be filed.

8. **In re Nigro Family Trust (PR12293).** Trial Setting. It appearing to this Court that the aforementioned settlement efforts have failed, it is time to put this petition on track for final resolution. See §1046. Parties to advise whether this matter 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. If not, parties to select trial date(s), and to advise whether either party is of the opinion that Cal. Const. Art. 1 §16 provides any right to a jury regarding any factual dispute involving a question of law herein. See, e.g., §§ 825, 17006.

9:30 am

9. **Guardianship of Green (PR11847).** No appearance is necessary. This Court has reviewed the GC-251 and finds that the guardianship remains necessary and convenient, and that the guardians are serving the ward's best interests. Court will set annual review hearing date.
10. **Guardianship of Renteria (PR10727).** There is no GC-251 on file to review. Guardians to advise.

10:00 am

11. **Guardianship of Towler (PR11524).** Unless the guardian appears and requests leave to petition to extend the guardianship for E.T., it shall be deemed to have terminated by operation of law.
12. **Guardianship of Ireland (PR11484).** Guardians must appear in person. In light of CRF70157, Court must set §2650 hearing and consider suspension of co-guardian powers (§2654) in the interim. Co-guardian is reminded of her right not to incriminate herself. Court investigator to be appointed. Counsel for minor to be appointed.
13. **In re Martin (PR12325).** Absent additional objection at the hearing, this Court, having reviewed and considered the petition, the capacity declarations, Mrs. Martin's procedural objections, and the court investigative report, is prepared to find by clear and convincing evidence that (1) the conservatee is medically unable to attend the hearing in person; (2) the conservatee is unable to properly provide for his personal needs for physical health, food, clothing, or shelter; (3) the conservatee is substantially unable to manage his own financial resources or to resist fraud or undue

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influence; (4) that a general conservatorship is the least restrictive option to protect the conservatee; and (5) that the proposed conservator (a) has the qualifications, abilities, and capabilities to perform the job and (b) while not nominated, has the support of the family and the trust of the conservatee. Counsel for the proposed conservatee neglected to lodge with this Court a proposed order and signed letters. Petitioner to file a preliminary title report or otherwise demonstrate how title is held to the Santa Cruz property before any action is commenced which might lead to its liquidation.

14. **Conservatorship of Hawn (PR11530).** This conservatorship of the estate was first established in early 2018, and but for one I&A filed 05/23/18, this Court has no information regarding the conservatee's assets. Although there is no express provision within the LPS statutory scheme for updated I&A filings or annual accountings because these conservatorships are supposed to terminate after just one year, §5361(a) and CRC 7.575 presuppose that even simplified accountings are kept and should be submitted beyond the one-year mark. Petitioner to advise.

1:30 pm

15. **In re Frantz (CV65759).** No appearance is necessary. Court will adopt petitioner's proposed adjustment.

3:00 pm

16. **In re Dean (CV65434).** Contested hearing re name change of minor. Court has considered objection and witness/exhibit information.