

Department 5 Probate Notes for Friday, March 14, 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.

8:30 a.m.

1. **Estate of Ross (PR11991).** Before the Court this day is a petition to approve the final accounting, allow fees and costs, and authorize distribution of the estate. The petition is not ready for approval, as a number of questions remain:
 - Where is the accrued interest reflected in the estate balance?
 - Did Cynthia agree to waiver her statutory fee as a personal representative?
 - Did Cynthia agree to accept the Buick and Ferretti interest in lieu of cash?
 - When did Cynthia move to Utah (compare Petition 23 with actual POS)?
 - Why are funds that were advanced to cover expenses, but included in the column for reimbursements, treated as “receipts” increasing the fee basis?
 - What is the “research” and “declaration” claimed as part of extraordinary fees?
2. **Estate of Fullam (PR12551).** Before the Court this day is the continued hearing on a spousal property petition involving the decedent’s presumed principal residence. In order to effectuate a non-probate transfer of real property, the surviving spouse must demonstrate to the satisfaction of the Court that said property absolutely passes to the surviving spouse in accordance with §13500. Since decedent had a will, petitioner must show that in conjunction with the will she secured /acquired “full power to sell, convey, lease, mortgage, or otherwise deal with and dispose of the” said property. §13540(a). because she does not have that power, the petition must be denied.

On 09/22/2010, Charles Fullam (hereinafter “decedent”) took title to the subject property (APN 091-190-041-000) as “a married man as his sole and separate property.” Although he was married to petitioner at the time, it appears from the transaction report that she deposited into escrow a quit claim deed (see Instrument #2010011716), which was recorded sequentially with the grant deed and mortgage deed of trust. Per decedent’s will, the subject property was devised to the Charles E. Fullam and Geraldine A. Ward Revocable Trust, with petitioner serving as the executor. Petitioner has a life estate in the trust res, and upon her passing the trust res then goes to Eilidh Maclean-Gillingham. Critically, the trust provides that “Any community property transferred to our trust will retain its character as community property during our lives [and] separate property transferred to our trust will retain its character as separate property.” Art. I.C.

It is therefore necessary to determine the character of the subject property. The general rule is that “all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property.” Family Code §760. There are many exceptions to that rule, most notably use of separate property funds and transmutation. See, e.g., Family Code §§ 770, 850. An interspousal quit claim deed, like

Department 5 Probate Notes for Friday, March 14, 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.

the one petitioner appears to have signed on 09/22/2010, is typically good enough to establish decedent's separate property interest. See *Marriage of Kushesh & Kushesh-Kaviani* (2018) 27 Cal.App.5th 449, 456-457. Moreover, in probate proceedings, the form of title, rather than the Family Code presumption, controls. See *Estate of Wall* (2021) 68 Cal.App.5th 168, 175. As such, this Court cannot make a finding that the property was community property. Decedent was free to direct the whole of the property via will into the trust, and was free to direct it through the trust to petitioner as a life estate, and thereafter to petitioner's niece in what would amount to a fee simple (or whatever should remain of the trust res after petitioner's reasonable use). The niece is free to assign her future interest to petitioner, thereby merging the remainderman with the present interest, and vesting a fee simple interest in petitioner – but that would require the niece to act, not this Court.

3. **Estate of Phipps (PR12493).** No appearance is necessary. Before the Court this day is the §8800 review hearing, and since a final I&A is already on file, no hearing is needed.
4. **Estate of Fountain (PR12509).** No appearance is necessary. Before the Court this day is the §8800 review hearing, and since a final I&A is already on file, no hearing is needed.
5. **Estate of Thrall (PR12562).** No appearance is necessary. Before the Court this day is a petition to open an intestate estate and to appoint a personal representative to serve without bond. All of the procedural and statutory requirements have been met to this Court's satisfaction. This Court intends to set §§ 8800 and 12200 review dates, and will have the clerk provide notice of those dates should counsel elect not to appear.
6. **Estate of Daniel (PR12570).** No appearance is necessary. Before the Court this day is a petition to open an intestate estate and to appoint a personal representative to serve without bond. All of the procedural and statutory requirements have been met to this Court's satisfaction. This Court intends to set §§ 8800 and 12200 review dates, and will have the clerk provide notice of those dates should counsel elect not to appear.
7. **Estate of Thomas (PR12571).** The Court, having received and reviewed the unopposed petition for letters of administration of an intestate estate, concludes that all of the procedural and substantive requirements have been satisfied except for one: Scott's ostensible authority to bind Janet to the bond waiver, and to a lesser degree the nomination. While a properly executed POA presumptively contains such power (see §4458), no party may expect a court to proceed on such representation without having first proven the existence and content of the POA (see §§ 4302, 4307).

Department 5 Probate Notes for Friday, March 14, 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.

8. **Estate of Longeway (PR12598).** Before the Country this day is a petition to determine succession to a portion of real property designated APN 082-020-021-000 and 083-100-008-000, bearing a combined value of \$64,000.00. The current owner of the subject portion of those parcels passed away fourteen (14) years ago. She had no will, but left behind three adult children who seek by this petition an order transferring to each of them a 1/12th interest in the subject parcels (1/3 each of decedent's 1/4 total interest). Despite recent changes to Probate Code §13151 (limiting these petitions to the decedent's primary residence), this Court intends to find – pursuant to Probate Code §3(h) and *Guardianship of Ann S.* (2009) 45 Cal.4th 1110 (at 1138) that application of the new law would substantially interfere with the effective conduct of the proceedings and the rights of the parties in connection with a circumstance that existed long before the operative date. However, the parties will still need to demonstrate proof that decedent retains a current ownership interest in the subject property, not simply rely on the deed from 1985.
9. **Estate of Elliott (PR12550).** Before the Court this day is the continued hearing on a petition for Letters of Special Administration with general powers. Most of the probate notes previously posted have been cured, but one lingers on: publication. See §8545(a). However, publication can be avoided if general powers are not required, which begs the question what are “the circumstances of the estate requiring the immediate appointment” of a special administrator? §8540(a).
10. **Volarvich v. Morton (FL18845).** This is a Family Court dispute erroneously scheduled within the probate calendar. However, due to a number of clerical snafus and delays, this Court does not have the heart to reschedule this and will simply switch hats for a moment. Father's RFO/TECO for exclusive control of the marital residence was granted on 02/06/25, clearing the way for residence rehabilitation in advance of going to market. Father to advise on status of same, and status of CRM76655 and CWS investigation.

10:00 a.m.

11. **Conservatorship of Strum (PR12235).** No appearance is necessary. This Court, having received and reviewed the court's investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory requirements for a general conservatorship, that a general conservatorship remains the least restrictive alternative for the conservatee's protection, and that the conservators continue to serve the conservatee's best interests. Court intends to set the annual review hearing date.

Department 5 Probate Notes for Friday, March 14, 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.

12. **Conservatorship of Kuffler (PR12289).** No appearance is necessary. As the parties have gleaned from the TR in Dept. 1, the penultimate issue regarding the conservatee's authority to execute a settlement agreement must be held in abeyance pending a determination in Dept. 1 about the very existence of any settlement agreement in the first instance. Court intends to set a review hearing for 90 days out.
13. **Conservatorship of Highfill (PR11639).** No appearance is necessary. This Court, having received and reviewed the court's investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory requirements for a general conservatorship, that a general conservatorship remains the least restrictive alternative for the conservatee's protection, and that the conservators continue to serve the conservatee's best interests. Court intends to set the annual review hearing date.
14. **Guardianship of Solano (PR11900).** 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 Cesco (PR12041).** 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 continue to serve the ward's best interests (incl. violin and piano). Court intends to set an annual review date.
16. **Guardianship of Rown (PR11416).** No appearance is necessary. As no petition to extend the guardianship was filed prior to the ward's 18th birthday, this guardianship has terminated by operation of law.
17. **Guardianship of Leonard (PR12347).** 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 continue to serve the ward's best interests (honor roll and ESS award). Court intends to set an annual review date.
18. **Guardianship of Smith (PR11898).** 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.

Department 5 Probate Notes for Friday, March 14, 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.

19. Guardianship of Alexander (PR12459). This is a petition by concerned family members (paternal aunt and spouse) to establish a guardianship for a minor child over the strong objection from both biological parents. Since the proposed guardians have not assumed the role of *de facto* parent status, Family Code §3041 requires them to show by clear and convincing evidence that leaving custody in the hands of the biological parents would be detrimental to the child and that creating the guardianship is required to serve the best interest of the child. This Court is aware of the fact that both biological parents are facing current criminal charges. See CRM72969, CRM72269, CRM74538, CRM74626, and CRM74537. Based on the initial court investigative report, and the equivocal evidence of unfitness, this Court reminded petitioners of the risk associated with pursuing unmeritorious petitions (see Probate Code §1611). The updated investigative report confirms that the child has been regularly attending school, in clean clothes, and with proper hygiene. The latest issue appears to be that the parents are no longer receptive to extended family input, but that is the Constitutional right of parents to control contacts. However, the court investigator noted that the parents had been a challenge to reach and schedule the home visit. An updated report has since been filed, noting that phone calls with the proposed guardian have gone well. Court granted proposed guardians an in-person visit for 02/01/25. Court anticipated an update regarding phone calls, visit, and bio parents' ongoing criminal and residential issues. Court still feels as though the bio parents have made strong strides toward a stable home for their child, but is informed that bio mom was just arrested under troubling circumstances. Court awarded petitioners additional visits on 02/22, 03/08, and 03/22. Court intends to keep unwrapping.

20. Conservatorship of Martin (PR12325). Court is awaiting the accounting.

21. Conservatorship of Davis (PR12595). Before the Court this day is a petition by the parents of an individual to establish a permanent limited conservatorship over his person (only), although a previous conservatorship was reportedly established in the State of Alaska. There is no transfer in order. The proposed conservatee has a developmental disability and receives services at VMRC. Court intends to appoint legal counsel, per conservators' request. Court investigator has already been appointed. No temporary application on file.

1:30 p.m.

22. Petition of AM (CV66845). Confidential proceeding to change name per CCP §1277.5 and H&S §103425(b).

Department 5 Probate Notes for Friday, March 14, 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.

- 23. Petition of KM (CV66657).** Nonconfidential proceeding to change middle name of minor child. At prior hearing, petitioner was advised that other parent needed to consent or to establish best interests of child, which requires proof of parentage.
- 24. Thompson v. Clemens (FL17661).** Trial Day 2 if needed.