

## Department 5 Probate Notes for Friday, June 20, 2025

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**8:30 a.m.**

1. **Estate of Blanchard (PR12634).** At the last hearing, petitioner and counsel advised of their continuing efforts to identify with particularity the assets subject the spousal property petition at issue. While the petition itself has been granted, this Court required a proposed order with more precision and detail, receipt of which has yet to occur.
2. **Estate of Diaghilev (PR12393).** This is a probate action originally styled as a *Heggstad* petition, but ultimately thwarted by the presence of a choice of law clause in the trust instrument favoring a state which does not specifically permit post-mortem trust funding. Before the Court this day is a petition for allowance and distribution pursuant to the decedent's will. Since the will pours the residuary into a trust, the number of questions that might arise are limited. However, two come to mind. First, there is a distribution of nearly \$17,000 to St. Paul's Towers on 08/15/2023, and two reimbursements from St. Paul (\$11,160 on 08/20/2023, and \$9,377.66 on 01/06/2025). Since these reimbursements were apparently used to calculate statutory fees, a further explanation will be required to explain why a distribution + reimbursement should count as a "receipt" rather than what it appears to be, to wit: a simple refund. Second, while a reserve for final tax returns is generally permissible, a reserve of \$30,000 to file returns for 2023 and 2024 is not since those returns should have been filed *during* this administration, and it is unknown to this Court whether there is to be any tax liability owing in excess of the cost for doing the late returns. This Court would prefer to complete the 2023 and 2024 returns with a "final" return for decedent, and to know whether estate assets will be impacted. Additional information is needed.
3. **Estate of Gallo (PR12259).** This is the continued hearing on a petition to allow fees (statutory and extraordinary), and to approve a distribution plan that comports with intestate statutes. At the hearing thereon, decedent's adult children made an oral objection to the distribution. Since Probate Code §11602 permits objections to final petitions without regard to any particular formalities, the general rule of thumb is that objections to final petitions can be made "orally at the hearing" and that "the court in its discretion shall either hear and determine the objection at the hearing or grant a continuance for the purpose of allowing a response or objection to be made in writing." Probate Code §1043(b). The adult children objecting to the proposed distribution have the burden of proving a basis for denying the petition or ordering a distribution different from that proposed. See *Rallo v. O'Brian* (2020) 52 Cal.App.5th 997, 1011; *Key v. Tyler* (2019) 34 Cal.App.5th 505, 528; *Estate of Della Sala* (1999) 73 Cal.App.4th 463, 470. The parties agreed to meet and confer on a proposed adjustment whereby petitioner would waive her statutory fee and agree to an equal division of decedent's estate. Court is awaiting word from the parties whether a resolution was achieved short of an evidentiary determination on the objection.

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4. **Estate of Spearer (PR12435).** This is the continued 12200 hearing on an estate proceeding in which the estate presently has no assets, and which awaits resolution of a personal injury claim to ever fund an estate. This Court expected another status report.
5. **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 this dispute can be resolved utilizing the probate summary procedures in lieu of an evidentiary hearing (§§ 1046, 9620, 17206), and if not whether the parties will agree to use verified pleadings, sworn declarations and deposition transcripts (§1022) in lieu of live testimony.
6. **LPS Conservatorship of Caywood (PR8920).** This is an LPS conservatorship, scheduled this date for a review of a 20<sup>th</sup> accounting. While no accounting appears in the court file, this Court notes that the last two accountings reflect little surplus because the conservatee's disability and supplemental income are used exclusively and entirely for ordinary room, board and expenses associated with daily living. It seems that accountings could be waived in this instance. See §2628(a). Moreover, LPS conservatorships "shall automatically terminate one year after the appointment of the conservator" (W&I Code §5361) and yet an accounting is only required "at the expiration of one year from the time of appointment" (§2620(a)), which begs the question *is there really an accounting requirement for LPS conservatorships?* Although §5350 does specify that a petition to establish an LPS conservatorship can cover both person and estate, and §5361 authorizes the conservator to continue tying up loose financial ends when the conservatorship ends, the prerequisite elements of "gravely disabled" for an LPS conservatorship speak only to conditions associated with a person, not an estate. Compare W&I §5008(h) with Probate Code §1801(a) and (b). The only published opinion to address this precise question concluded much as this Court does: no accounting requirement exists. See *Conservatorship of Munson* (1978) 87 Cal.App.3d 515, 518-520. However, if there is something potentially anomalous about the use of the conservatee's funds while institutionalized, there should be some mechanism for review. See §2628(b) and *Conservatorship of Scharles* (1991) 233 Cal.App.3d 1334, 1343 n.8. Thus, this Court concludes that rather than an obligation to account for the use of funds belonging to a LPS conservatee on a regular basis, the public guardian need only account to the LPS conservatee when the LPS conservatorship fully terminates, not "terminates" annually (§§ 2630-2631). Since the statute of limitations for any alleged transgression will not accrue until the accounting has been presented and approved, the conservator may elect of its own accord to present accountings more frequently, but that is up to the conservator. This hearing can go off-calendar.

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**10:00 a.m.**

7. **Conservatorship of Aguirre (PR12272).** No appearance is necessary. This Court, having received and reviewed the confidential investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory requirements for a general conservatorship of the person, that a general conservatorship of the person continues to be the least restrictive option for this individual, and that the conservator continues to serve the conservatee's best interests. Court intends to set annual review date.
8. **Conservatorship of Kopyn (PR8895).** No appearance is necessary. This Court, having received and reviewed the confidential investigative report, intends to find by clear and convincing evidence that the conservatee still meets the statutory requirements for a general conservatorship of the person and estate, that a general conservatorship continues to be the least restrictive alternative for this individual, and that the conservators continue to serve the conservatee's best interests. Query: should this be a limited conservatorship?
9. **Guardianship of Davis x2 (PR11524).** The Court, having received and reviewed the GC-251 reports for both wards with attachments, intends to find by a preponderance of the evidence that the guardianships remain necessary/convenient, and that the guardian continues to serve the best interest of the children. Court will set annual review date.
10. **Guardianship of Bodle (PR12648).** Before the Court this day is the initial hearing on a petition to establish a temporary and permanent guardianship of the person of one minor child age 3, commenced by the prospective ward's maternal uncle, on the ostensible basis that bio mom is absent/unfit and bio dad is absent. There is no POS, no bio parent consent, and no investigative report completed. Court to confirm current residence of ward for evidentiary burdens per Family Code §§ 3041 and 7822.
11. **Guardianship of Gonzales (PR12260).** The Court, having received and reviewed the GC-251 report with the generously voluminous attachments, intends to find by a preponderance of the evidence that the guardianship remains necessary/convenient, and that the guardians continue to serve the best interest of the child. Court will set annual review date.
12. **Guardianship of Klaverweiden (PR11791).** No appearance is necessary. Before the Court is a petition to approve the 4<sup>th</sup> accounting for the guardianship of this estate. The Court, having received and reviewed the accounting, concludes with relative ease that the accounting is to be approved. Although annual accountings continue to be warranted given the uncertainty with annuity payment schedules, this Court is amenable to summary schedule accounts when there is *de minimus* Schedule C/D activity. Counsel may use the

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GC-400 forms instead, and should there come a point when the annuity is exhausted, the court is amenable to considering a blocked account in lieu of a guardianship of the estate.

13. **Guardianship of Steele (PR11943).** Before the Court this day is the initial hearing on bio mom's petition to terminate the paternal grandmother's guardianship over the person of a ward, age 12, which was first established in 2021. There is no POS on the guardian, but since the annual review hearing is currently on calendar for 07/11/25, this Court anticipated opposition from the guardian, appointing the court investigator, and continuing the matter.
14. **Guardianship of Pahukoa x3 (PR12555).** This is an annual guardianship review. Pursuant to Probate Code §1513.2(a), every year the guardian(s) shall complete and return to the court a status report (GC-251). The court clerk is required to provide a reminder to the guardian(s), along with a blank GC-251, which did occur herein on 04/18/2025. Based on the nature of the proceedings to date, this Court assumes that the guardianship is still needed, warranted and desired. Thus, the guardianship may be temporary carried over until a report and order are completed. Guardians to advise as to the status.
15. **Guardianship of France (PR12603).** Hearing continued to 07/11/2025.
16. **Guardianship of Hernandez (PR11351).** Parties to update Court regarding visits.
17. **Guardianship of Dalrymple x2 (PR11165).** The Court, having received and reviewed the GC-251 reports for both wards with attachments, intends to find by a preponderance of the evidence that the guardianships remain necessary/convenient, and that the guardians continue to serve the best interest of the children. Court will set annual review date.
18. **Guardianship of Okelsrud (PR12397).** There is presently on calendar a petition by the guardian (paternal grandmother) to terminate her own guardianship in favor of restoring bio dad's parenting rights and duties, as well as a new petition by bio dad to terminate the guardianship and to reinstitute his own parenting time. There is also an RFO filed by bio dad in this probate action to establish sole legal and physical custody should the guardianship case terminate – even though the RFO should technically have been filed in the related family case (FL10299) since that is where bio dad and bio mom shared joint legal and physical custody immediately prior to the establishment of the guardianship. Although Father's TECO was denied, this Court will take testimony from Father in support of said TECO for the limited purpose of granting his request for interim relief upon the termination of the guardianship, after which a hearing will be set in the family case requiring proper notice to bio mom.

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**1:30 p.m.**

19. **Petition of ACH (CV67199).** Nonconfidential petition to change last name. No proof of publication in the court file. Hearing will likely need to be continued due to delayed mailing by court staff.
20. **Engwer v. Rutledge (FL17990).** Voluntary settlement conference.
21. **Marriage of Greene (FL13766).** Nonconfidential application to restore former name. Voir dire re §2081(b).