ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

Dept. 303, 9:00 a.m. Wednesday, January 4, 2012

1 George Banigan (CONS/PE) Case No. 08CEPR01029

Atty Keeler, William J. (for William Durant, Jr. – Conservator/Petitioner)

(1) Second and Final Account, Report of Conservator and Petition for Its Settlement, (2) Allowing Amount Paid Over $3,500 for Relocation of Conservatee to Massachusetts, (3) for Allowance of Compensation and Reimbursement for Out-of-Pocket Expenses to Conservator, (4) for Allowance of Attorneys' Fees and Costs, Delivery of Assets; and (5) Termination of Conservatorship Proceedings (Prob. C. 1861 2620)

Age: 68		
DOB: 12/18/43		
Cont. from		
	Aff.Sub.Wit.	
✓	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
✓	**Notice of Hrg**	
✓	**Aff.Mail**	w/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
✓	**CI Report**	
✓	**2620(c)**	
✓	**Order**	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

WILLIAM DURANT, JR., Conservator, is Petitioner.

Account period: **11/01/09 – 08/20/11**

Accounting - **$258,955.21**
Beginning POH - **$246,889.34**
Ending POH - **$132,377.40**

Conservator - **$199.00** (per declaration, requesting $10.00/mo. for 22 months, less $21.00)

Conservators Costs - **$64.39** (for unreimbursed out of pocket expenses related to relocation and for the purchase of personal items for George)

Moving Costs - **$320.62** (for travel expenses, in addition to $3,500.00 previously authorized by the Court)

Attorney - **$24,000.00** (per declaration and itemization, representing 62.60 attorney hours and 102.2 paralegal hours for preparation of the First Account and related documents, attendance at hearing re First Account, preparation of corrected Inventory & Appraisal, preparation of Ex Parte Petition for increase of bond, working with bond company to obtain additional bond, respond to requests made by US Copyright Office related to conservatee's mother's estate, coordination, preparation of documents and conferences with conservator regarding moving conservatee to Massachusetts, coordination with Massachusetts attorneys regarding establishing the Massachusetts conservatorship, preparation of the Second Account and related documents, preparation of an Ex Parte petition for final discharge of the Conservator)

Attorney Costs - **$1,273.13** (for Filing fees, overnight delivery fees, certified copies, recording fees)

Petitioner states that the Conservatee is now residing in Massachusetts and a Conservatorship has been established in Massachusetts; therefore, the Petitioner requests that this Conservatorship be terminated and Petitioner be allowed to transfer any and all remaining assets of the conservatorship estate to William D. Durant, Jr. as Conservator under case no. 10P4410 in Massachusetts.

Petitioner prays for an Order:

1. Approving, allowing and settling the second and final account;
2. Authorizing the conservator and attorney's fees and commissions; and
3. Authorizing the conservator and attorney's costs.

NEEDS/PROBLEMS/ COMMENTS:
Reviewed by: JF
Reviewed on: 12/16/11
Updates:
Recommendation:
File 1 - Banigan

Dept. 303, 9:00 a.m. Wednesday, January 4, 2012

2 **Ronald J Olivas (Estate)** **Case No. 09CEPR01060**

Atty **Robertson, Hugh Duff (for Robert Olivas – Brother – Administrator)**

(1) Petition for Settlement of First and Final Account and Report by Administrator, (2) for Final Distribution, and (3) for Order Fixing and Allowing Statutory Compensation, Extraordinary Compensation, and (4) Reimbursement of Costs

DOD: 9-18-08

	Aff.Sub.Wit.	
	Verified	X
✔	**Inventory**	X
✔	**PTC**	
✔	**Not.Cred.**	
	Notice of Hrg	X
	Aff.Mail	X
	Aff.Pub.	
✔	**Sp.Ntc.**	X
	Pers.Serv.	
	Conf. Screen	
✔	**Letters**	4-29-10
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
✔	**9202**	
	Order	X
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
✔	**FTB Notice**	

ROBERT OLIVAS, Administrator, is Petitioner.

Account period: 4-29-10 through 11-4-11

Accounting: $67,500.00
Beginning POH: $67,500.00
Ending POH: $0.00

Administrator: Waived

Attorney: $2,700.00 (Statutory – See Notes)

Attorney (Extraordinary): $1,380.00

- Attorney Robertson states these extraordinary fees are calculated at $350.00/hr, a reduced rate from his ordinary billing rate of $450.00/hr.
- Declaration (Exhibit 2) itemizes 1.4 attorney hours and 8.9 law clerk's hours in connection with the foreclosure of the property.

Costs: $2,186.32 (Itemized – See Notes)

Petitioner states the estate is insolvent and there are no assets with which to pay creditors, costs of administration, or distribute to heirs. The only asset of the estate was a 50% interest in certain real property (Decedent's residence) that was foreclosed. Petitioner is aware of two Creditor's Claims. The Franchise Tax Board filed their claim and a Request for Special Notice, but another creditor did not formally file a claim. Due to the insolvency of the estate, the creditors have not been paid.

However, Petitioner's attorneys reserve their right to receive fees and costs in the event that assets are discovered.

Attorney Robertson states his office has attempted to communicate with the Administrator; however, he has not responded to letters regarding the estate. Attorney Robertson requests to withdraw as attorney of record.

NEEDS/PROBLEMS/COMMENTS:

1. **Need proof of service of Allowance or Rejection of Creditor's Claim (Mandatory Judicial Council Form DE-174) on the Franchise Tax Board per Probate Code §9250.**

   <u>Note</u>: A creditor has 90 days to act on a rejected claim. Therefore, this matter cannot go forward unless the time has run or waiver of notice and/or action is provided.

2. **The Inventory and Appraisal is not verified by the Administrator pursuant to Probate Code §1020.**

3. **The Account is not verified by the Administrator pursuant to Probate Code §§ 1020, 1023, 11640(a).**

4. **Need Notice of Hearing (Mandatory Judicial Council Form DE-120).**

5. **Attorney's statutory fee calculation does not include the loss on the property.**

   Per Estate of Stein (1968) Cal.App. 2, 631, the loss on a foreclosed property is the difference between the Inventory and Appraisal value and the encumbrances.

   Therefore, need information regarding the encumbrance(s) and recalculation of statutory fee.

<u>SEE PAGE 2</u>

Reviewed by: skc

Reviewed on: 12-16-11

Updates: 12-21-11

Recommendation:

File 2 - Olivas

2 Ronald J Olivas (Estate) Case No. 09CEPR01060

Atty Robertson, Hugh Duff (for Robert Olivas – Brother – Administrator)

(1) Petition for Settlement of First and Final Account and Report by Administrator, (2) for Final Distribution, and (3) for Order Fixing and Allowing Statutory Compensation, Extraordinary Compensation, and (4) Reimbursement of Costs

NEEDS/PROBLEMS/COMMENTS:

6. Cost itemization includes $784.32 in costs considered by the Court to be costs of doing business and not reimbursable pursuant to Local Rule 7.17, including:
- Fed Ex $65.12
- Runner Services $598.31
- Photocopies $14.00
- Research $106.89

7. Declaration of Angela F. Gerovac (Attorney Robertson's office) indicates that she had a telephone conversation in August with the Administrator during which he seemed agreeable; however, he then did not respond to letters.

The declaration states the office has not received any communications or returned mail indicating change of phone or address; however, the declaration also does not indicate any further diligence to contact the Administrator other than sending a letter and an email in August 2011 and another letter in October 2011.

The Court may require further diligence regarding the Administrator with regard to closing this estate and with regard to the attorney's request for withdrawal as attorney of record.

<u>Note</u>: This matter cannot move forward unless these items are addressed.

3 **Ernest C. Megazzini (Estate)** **Case No. 11CEPR01004**

Atty **Moore, Susan L. (of Pascuzzi, Moore & Stoker, for Ernest C. Megazzini – Son – Petitioner)**

Petition for Letters Administration; Authorization to Administer Under IAEA (Prob. C. 8002, 10450)

DOD: 11-16-10			**ERNEST C. MEGAZZINI**, Son, is Petitioner and requests appointment as Administrator with Full IAEA without bond. Petitioner is a resident of Alpharetta, GA. All heirs waive bond. Full IAEA – ok Decedent died intestate Residence: Fresno Publication: Fresno Business Journal **Estimated Value of Estate:** Real property: $103,000.00 Probate referee: Steven Diebert	**NEEDS/PROBLEMS/COMMENTS:** **1. All heirs waive bond; however, the Court may require bond if the proposed personal representative resides outside California or for other good cause per Probate Code §8571 and Cal. Rule of Court 7.201(b).** **<u>Note</u>: The only relatives/heirs listed are Petitioner and his sister Donna Maria Megazzini Ewert, who has signed a waiver of bond (attached to Petition).**
	Aff.Sub.Wit.			
✔	**Verified**			
	Inventory			
	PTC			
	Not.Cred.			
✔	**Notice of Hrg**			
✔	**Aff.Mail**	W		
✔	**Aff.Pub.**			
	Sp.Ntc.			
	Pers.Serv.			
	Conf. Screen			
✔	**Letters**			
✔	**Duties/Supp**			
	Objections			
	Video Receipt			
	CI Report			
	9202			
✔	**Order**			
	Aff. Posting			**Reviewed by:** skc
	Status Rpt			**Reviewed on:** 12-16-11
	UCCJEA			**Updates:**
	Citation			**Recommendation:**
	FTB Notice			**File 3 - Megazzini**

Dept. 303, 9:00 a.m. Wednesday, January 4, 2012

4 Ronald J. Houde Revocable Trust 5/17/11 (Trust) Case No. 11CEPR01012

Atty **Janian, Paulette (for Ruth Houde – Ex-Wife – Acting Trustee – Petitioner)**

Petition of Order Confirming Trust Assets [Probate Code 850 (A) (3)]

DOD: 5-22-11		
	Aff.Sub.Wit.	
✔	Verified	
	Inventory	
	PTC	
	Not.Cred.	
✔	Notice of Hrg	X
✔	Aff.Mail	W
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
✔	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

RUTH HOUDE, ex-wife and acting trustee, is Petitioner.

Petitioner states Decedent created this trust on 5-17-11, shortly before he died on 5-22-11. The Schedule of Trust Assets specifically designates three Bank of America accounts as trust assets; however, Decedent was unable to formally transfer these accounts to the trust before he died, as he was gravely ill with lung cancer.

Decedent resided in Los Angeles County, and also died there; however, Petitioner states the principal place of trust administration is Fresno County, as that is Petitioner resides in Selma and is the acting trustee.

Petitioner prays for an order:

1. That the Ronald J. Houde Revocable Trust dated May 17, 2011 is valid;

2. That the three Bank of America accounts are subject to the management and control of Petitioner as trustee.

NEEDS/PROBLEMS/COMMENTS:

1. **Petitioner provides the names and addresses of the trust beneficiaries at #9; however, there is no statement that these beneficiaries are the <u>only persons entitled to notice</u> pursuant to Probate Code §§ 17201 and 17203.**

   Examiner notes that the Petition and the Trust both state Decedent had no issue; however, the two minor beneficiaries are listed as "granddaughter" and "grandson" (no "step" designation).

   Examiner also notes that although the trust states the settlor has no living or deceased children, it also later states: "…in no event shall Robert Houde be appointed to serve as trustee."

   <u>The Court may require clarification</u> as to the relationships of the grandchildren and the identity of the prohibited trustee.

   (Probate Code §17203 requires notice to any person whose right, title or interest would be affected by the petition. This may include an intestate heir in the event that the Court does not make a finding of validity of the trust.)

2. **Petitioner sent notice directly to minor heir Cody Spang (16); however, Cal. Rule of Court 7.51(d) requires that a separate copy of the notice must be sent to the person or persons having legal custody of the minor, with whom the minor resides.**

   Therefore, need proof of service of Notice of Hearing on Cody's parent or guardian at least 30 days prior to the hearing.

   (The Court may <u>not</u> shorten time for notice pursuant to Probate Code §17203.)

Reviewed by: skc

Reviewed on: 12-16-11

Updates:

Recommendation:

File 4 - Houde

5 Ruth K. Castle (Estate) **Case No. 11CEPR01046**

Atty Sanoian, Joanne (for Petitioner Betsy McMillian

Petition for Probate of Will and for Letters Testamentary; Authorization to Administer Under IAEA (Prob. C. 8002, 10450)

DOD: 10/23/11		
Cont. from		
	Aff.Sub.Wit.	S/P
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	
✓	Aff.Mail	W/
✓	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
✓	Letters	
✓	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

BETSY K. McMILLAN, named executor without bond, is petitioner.

Full IAEA – o.k.

Will dated: 7/26/01

Residence: Fresno
Publication: Fresno Business Journal.

Estimated Value of the Estate:

Personal property	-	$ 90,000.00
Real property	-	$200,000.00
Total	**-**	**$290,000.00**

Probate Referee: STEVEN DIEBERT

NEEDS/PROBLEMS/COMMENTS:

Reviewed by: KT
Reviewed on: 12/19/11
Updates:
Recommendation: SUBMITTED
File 5 - Castle

Dept. 303, 9:00 a.m. Wednesday, January 4, 2012

6 Maricarmen Garrido (CONS/P) **Case No. 07CEPR01015**

Atty **Palmer, Donna (pro per Conservator)**

Atty **LeVan, Nancy J. (court appointed for the Conservatee)**

Status Hearing Re: Proof of Conservatorship in Michigan

Age: 23 years **DOB: 3/20/1988**	**DONNA PALMER**, non-relative, was appointed as conservator of the person on 2/1/08. On 5/27/11 Conservator filed a Petition to Fix the Residence of the Conservatee Outside the State of California to Detroit Michigan. In her petition, Conservator stated the move was necessary because the Conservator needed to help care for her elderly parents and that she needed to alleviate economic hardship. On 8/4/11 the Court granted the petition and ordered a conservatorship or its equivalent to be commenced in the State of the new residence within four months. This status hearing was set for the status of commencing a conservatorship in Michigan.	**NEEDS/PROBLEMS/COMMENTS:** **1. Need current status report.**
Cont. from		
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		**Reviewed by: KT**
Status Rpt		**Reviewed on: 12/19/11**
UCCJEA		**Updates:**
Citation		**Recommendation:**
FTB Notice		**File 6 - Garrido**

7 Tiffany Lynn Johnson (CONS/P) **Case No. 09CEPR00664**

Atty Palmer, Donna (pro per Conservator)
Atty Palmer, Emanuel (pro per Conservator)
Atty LeVan, Nancy J. (Court appointed for Conservatee)

Status Hearing Re: Proof of Conservatorship in Michigan

Age: 20 years DOB: 2/1/1991	**DONNA PALMER** and **EMANUEL PALMER,** non-relatives, were appointed as conservator of the person on 9/22/09. On 5/27/11 Conservator filed a Petition to Fix the Residence of the Conservatee Outside the State of California to Detroit Michigan. In her petition, Conservator stated the move was necessary because the Conservator needed to help care for her elderly parents and that she needed to alleviate economic hardship. On 8/4/11 the Court granted the petition and ordered a conservatorship or its equivalent to be commenced in the State of the new residence within four months. This status hearing was set for the status of commencing a conservatorship in Michigan.	**NEEDS/PROBLEMS/COMMENTS:** **1. Need Current Status Report**
Cont. from		
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		Reviewed by: KT
Status Rpt		Reviewed on: 12/19/11
UCCJEA		Updates:
Citation		Recommendation:
FTB Notice		File 7 - Johnson

8 Cozette Snowden (CONS/P) **Case No. 10CEPR00801**

Atty Palmer, Donna (pro per Conservator)
Atty Palmer, Emanuel (pro per Conservator)
Atty LeVan, Nancy J. (Court Appointed for Conservatee)

Status Hearing Re: Proof of Conservatorship in Michigan

Age: 19 years DOB: 8/28/1992	**DONNA PALMER** and **EMANUEL PALMER,** non-relatives, were appointed as conservator of the person on 10/14/10. On 5/27/11 Conservator filed a Petition to Fix the Residence of the Conservatee Outside the State of California to Detroit Michigan. In her petition, Conservator stated the move was necessary because the Conservator needed to help care for her elderly parents and that she needed to alleviate economic hardship. On 8/4/11 the Court granted the petition and ordered a conservatorship or its equivalent to be commenced in the State of the new residence within four months. This status hearing was set for the status of commencing a conservatorship in Michigan.	**NEEDS/PROBLEMS/COMMENTS:** 1. **Need Current Status Report**
Cont. from		
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		Reviewed by: KT
Status Rpt		Reviewed on: 12/19/11
UCCJEA		Updates:
Citation		Recommendation:
FTB Notice		File 8 – Snowden

9 **Zoe Louise Nadine O'Ryan (GUARD/P)** **Case No. 06CEPR00577**

Atty **Huffman, Nora Sue (pro per Petitioner/maternal aunt)**

Petition for Appointment of Guardian of the Person (Prob. C. 1510)

Age: 7 years
DOB: 9/3/2004

Cont. from

	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
✓	Not.Cred.	
	Notice of Hrg	
	Aff.Mail	X
	Aff.Pub.	
	Sp.Ntc.	
✓	Pers.Serv.	W/
✓	Conf. Screen	
✓	Letters	
✓	Duties/Supp	
	Objections	
	Video Receipt	
✓	CI Report	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
✓	UCCJEA	
	Citation	
	FTB Notice	

There is no Temporary.
Temporary was denied on 11/8/11.

NORA SUE HUFFMAN, maternal aunt, is Petitioner.

Father: **JESSIE RAY COLLINS**
- *Declarations of Due Diligence have been filed by previous petitioners, most recently on 6/1/10 by mother Heather Hamm*

Mother: **HEATHER HAMM**
- *Personally served 11/1/11*

Paternal grandfather: Unknown
Paternal grandmother: Unknown

Maternal grandfather: Earnest Hamm
- *Deceased*

Maternal grandmother: Connie L. Huffman
- *Former Guardian from 10/5/06 through 12/16/10*
- *Current visitation order for supervised visits on Saturdays from 10am to 2pm*
- *Filed Declaration in support of this petition on 10/31/11*

Petitioner states the child's safety and well-being are in immediate danger. Mother has exposed the child to a dangerous person, Christopher Allen Wilkenson, whom she has been advised to keep away from the child. As of 10/13/11, the child accused Wilkinson of sexually abusing her over the past year.

Please see additional page

NEEDS/PROBLEMS/COMMENTS:

<u>Note</u>: Petitioner resides in Castroville, which is Monterey County.

1. **Need proof of personal service of the *Notice of Hearing* along with a copy of the petition or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on:**
   a. **Jessie Ray Collins** *(if court does not dispense with notice)*
2. **Need proof of service of the *Notice of Hearing* along with a copy of the petition or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on:**
   a. **Connie Huffman, maternal grandmother.**
   b. **Unknown paternal grandparents**

Reviewed by: KT
Reviewed on: 12/20/11
Updates: 12/22/11
Recommendation:
File 9 - Oryan

Dept. 303, 9:00 a.m. Wednesday, January 4, 2012

Petitioner further states since termination of the prior guardianship, mother has isolated Zoe from openly communicating with Petitioner or grandmother. Zoe indicates that she is upset and scared at home, but refrains from discussing *why* because her mother has told her she cannot tell anyone what is happening. Zoe told her grandmother that she is afraid of Wilkenson but was afraid her mother would be mad that she told. On 8/27/11, Zoe became hysterical and said, "Mom smacks me and I'm afraid of Chris. Don't make me go home." Grandmother did not want to keep the child any longer because she was afraid of losing her visitation; however, six weeks later, the child revealed to her mother that Wilkerson had been sexually abusing her. The child was left alone numerous times with this man. There is a current investigation with the Fresno Police Dept.

Mother also is reportedly using drugs with the child present and has a habit of keeping the child out of school. Petitioner states mother is threatening to move the child out of state, which will prevent any family from protecting her.

Court Investigator Dina Calvillo's Report filed on 12/21/11.

10 Erika Hernandez, Logan Hernandez, & Jaydin Hernandez (GUARD/P)

Case No. 08CEPR01188

Atty Hernandez, Teresa (pro per Petitioner/guardian/paternal grandmother)

Petition for Supervised Visitation

Erika age: 7 years DOB: 9/21/04		
Logan age: 4 years DOB: 2/25/07		
Jaydin age: 3 years DOB: 7/28/08		
Cont. from 110811		
	Aff.Sub.Wit.	
✓	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	X
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	X
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

TERESA HERNANDEZ, guardian/paternal grandmother, is petitioner.

Petitioner was appointed guardian on 2/9/09.

Father: **HECTOR HERNANDEZ**

Mother: **ELIZA FRAUSTO**

Minute Order dated 7/15/09 granted mother unsupervised visitation every Saturday and Sunday from 10:00 a.m. to 6:00 p.m.

Petitioner states the mother, Eliza Frausto, has failed more than 50% of the time to exercise her visitation rights. The times that she has exercised her visitation she has arrived at least one hour late most of the time.

Petitioner states on several occasions when the minors return from a visit their hair and clothing smells of marijuana. Also, Erika has been present when the mother is injecting herself and her boyfriend with drugs.

Petitioner has instructions from the doctor not to let Jaydin get into any swimming pool because of tubes in his ears and mom is not following those instructions.

Logan comes back from visits with bruises and scratches and says that his mother hits him.

Erika's behavior is changing. Erika reported that one time her mother tried to give her some type of cigarette that was so small her mother had to hold it with her fingertips.

Petitioner states she is also worried about the youngest child (petitioner does not have guardianship of her). Gabriella was born in January 2010. Petitioner states she is also her grandchild and she is worried about her wellbeing.

For the above reasons Petitioner requests the mother's visitation be modified to supervised visits.

NEEDS/PROBLEMS/COMMENTS:

Continued from 11/8/11. Minute Order states the Court orders all prior orders remain in full force and effect. ***As of 12/19/11 the following issues remain:***

1. **Need *Notice of Hearing*.**
2. **Need proof of service of the *Notice of Hearing* on:**
   a. **Eliza Frausto (mother)**

Reviewed by: KT
Reviewed on: 12/19/11
Updates:
Recommendation:
File 10 - Hernandez

11 Cylis Joe Gilbert (GUARD/P) **Case No. 08CEPR01213**

Atty Van Linge-Schuh, Victoria (pro per Guardian)

Atty Bird, Seth T. (pro per Petitioner/father)

Petition for Termination of Guardianship (Prob. C. 1460, 1601, 2626, 2627, 2636)

Age: 5 years		
DOB: 4/22/06		
Cont. from		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	X
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
✓	CI Report	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

SETH BIRD, father, is petitioner.

VICTORIA VAN LINGE-SCHUH, maternal grandmother was appointed guardian on 9/1/09.

Mother: **CHERISSE GILBERT**

Paternal grandfather: Kenneth Bird
Paternal grandmother: Kimberly Bird
Maternal grandfather: Keith Gilbert

Petitioner states he left the state the year this case was opened and was unable to do anything about it. Petitioner states, he is currently back in California and has had a very closer relationship with his son and sill does. Petitioner states he is a very good father and his son tells him all the time that he wants to be with him (his father).

Court Investigator Julie Negrete's Report filed on 12/15/11.

NEEDS/PROBLEMS/COMMENTS:

1. **Need Notice of Hearing.**
2. **Need proof of service of the Notice of Hearing on:**
   a. **Victoria Van Linge-Schuh (guardian/maternal grandmother)**
   b. **Cherisse Gilbert (mother)**
   c. **Kenneth Bird (paternal grandfather)**
   d. **Kimberly Bird (paternal grandmother)**
   e. **Keith Gilbert (maternal grandfather)**

Reviewed by: KT
Reviewed on: 12/19/11
Updates:
Recommendation:
File 11 - Gilbert

12 Saul Ornelas & Maximus Ornelas (GUARD/P) Case No. 09CEPR00415

Atty Reed, Frances (Pro Per – Mother – Petitioner)

Atty Rubio, Vera (Pro Per – Paternal Grandmother – Guardian)

Petition for Visitation

Saul Ornelas (13) **DOB: 9-24-98**		
Maximus Ornelas (10) **DOB: 6-27-01**		
	Aff.Sub.Wit.	
✔	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	X
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

FRANCES REED, Mother, is Petitioner.

VERA RUBIO, Paternal Grandmother, was appointed Guardian on 10-8-09.

Father: Saul Ornelas III
Paternal Grandfather: Saul Ornelas, Jr.
Maternal Grandfather: John Reed
Maternal Grandmother: Grace Mora
Sibling: Joseph Mora

Mother requests longer visits with her boys and would like to start the process to obtain custody. Mother feels she can be a positive influence in her sons' lives.

Current visitation granted 10-8-09:

- Supervised visits to Mother every Saturday and Sunday from 3-5 pm at Guardian's home
- Supervised visits to Father for two hours per week to be determined by the Guardian
- Guardian is to make sure the mother and father's visits do not overlap.

NEEDS/PROBLEMS/COMMENTS:

1. **Need Notice of Hearing.**
2. **Need proof of service of Notice of Hearing at least 15 days prior to the hearing on:**
   - Vera Rubio (Guardian)
   - Saul Ornelas (Minor age 13)
   - Saul Ornelas III (Father)
   - Saul Ornelas, Jr. (Paternal Grandfather)
   - John Reed (Maternal Grandfather)
   - Grace Mora (Maternal Grandmother)
   - Joseph Mora (Sibling, if 12 or older)

Reviewed by: skc

Reviewed on: 12-19-11

Updates:

Recommendation:

File 12 - Ornelas

13 Jordan Giovanni Molina (GUARD/P) **Case No. 11CEPR00852**

Atty Quintanar, Sophia (Pro Per – Paternal Grandmother – Petitioner)

Petition for Appointment of Guardian of the Person (Prob. C. 1510)

Age: Almost 2 years old		
DOB: 12-12-09		
Cont. from 112311		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
✓	Notice of Hrg	
✓	Aff.Mail	W
	Aff.Pub.	
	Sp.Ntc.	
✓	Pers.Serv.	W
✓	Conf. Screen	
✓	Letters	
✓	Duties/Supp	
	Objections	
	Video Receipt	
✓	CI Report	
✓	Clearances	
✓	Order	
	Aff. Posting	
	Status Rpt	
✓	UCCJEA	
	Citation	
	FTB Notice	

TEMPORARY DENIED 10-5-11

SOPHIA QUINTANAR, Paternal Grandmother, is Petitioner.

Father: **DIONICIO CARLOS RAMIREZ**
- Nomination and Consent and Waiver of Notice filed 10-3-11

Mother: **CATHERINE GARCIA**
- Declaration of Due Diligence filed 10-3-11

Paternal Grandfather: Carlos Ramirez Navarro
Maternal Grandfather: Unknown
Maternal Grandmother: Unknown

Petitioner states Mother has been unable to provide stability. The child is forced to stay here and there with whoever will house them. Mother's friends look like they are drug addicts.

Court Investigator Samantha Henson filed a report on 11-16-11.

Court Investigator to provide supplemental report per Minute Order 11-15-11.

NEEDS/PROBLEMS/COMMENTS:

Note: Per the UCCJEA, the child has been with Petitioner since 9-15-11, and prior to that was with a non-relative "Nani" (Father's girlfriend).

Note: According to the temporary petition, Mother does not have a stable address and was released from incarceration on 9-18-11.

Minute Order 10-5-11 (Temporary): Petitioner informs the Court that the mother has the child. The Court denies the petition given that the child is with his mother. General hearing remains set for 11-23-11.

Minute Order 11-23-11: Examiner notes provided to Petitioner. The Court directs Petitioner to cure the defects. The Court orders the investigator to do a follow-up investigation with regard to where the minor is and whether Petitioner wants to pursue the petition.

Court Investigator to provide supplemental report.

If this petition goes forward, the following issues exist:

1. **Notices of Hearing indicate a wrong hearing (1-2-12). The Court may require amended service on Mother and Paternal Grandfather.**

Reviewed by: skc

Reviewed on: 12-15-11

Updates: 12-21-11

Recommendation:

File 13 - Molina

Atty Gonzales, Sandra (pro per Petitioner/paternal grandmother)

Petition for Appointment of Guardian of the Person (Prob. C. 1510)

Age: 6 years DOB: 3/22/05		
Cont. from		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	X
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
✓	Conf. Screen	
✓	Letters	
✓	Duties/Supp	
	Objections	
	Video Receipt	
✓	CI Report	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
✓	UCCJEA	
	Citation	
	FTB Notice	

GENERAL HEARING 1/4/2012

SANDRA GONZALES, paternal grandmother, is petitioner.

Father: **SERGIO GONZALES –** *consents and waives notice.*

Mother: **LYDIA ROMERO** – *consents and waives notice.*

Paternal grandfather: Sergio Anaya
Maternal grandfather: Armando Romero – *consents and waives notice.*
Maternal grandmother: Marina Torres – *consents and waives notice.*

Petitioner states mom was never in the minor's life and dad is no longer in the home.

Court Investigator Charlotte Bien's Report filed on 12/12/11.

NEEDS/PROBLEMS/COMMENTS:

Please see related case on page 15. Petitioner is also requesting to be appointed as guardian of this minor's half sibling, Benjamin Gonzales (they have the same father).

1. **Need *Notice of Hearing.***
2. **Need proof of service of the *Notice of Hearing* along with a copy of the *Petition for Appointment of Guardian* or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on:**
   a. **Sergio Anaya (paternal grandfather)**

Reviewed by: KT
Reviewed on: 12/16/11
Updates:
Recommendation:
File 25 - Gonzales

15 Alexandrea Regalado, Armando Regalado, Ezekiel Regalado, Justin Sanchez and Benjamin Gonzales (GUARD/P) **Case No. 11CEPR00960**

Atty Gonzales, Sandra (Pro per, Petitioner/paternal grandmother)
Atty Sanchez, Yvonne E. (pro per maternal grandmother)

Petition for Appointment of Guardian of the Person (Prob. C. 1510)

Age: 1 month DOB: 10/3/11			**Temporary Expires 1/4/2012**	**NEEDS/PROBLEMS/COMMENTS:**
			SANDRA GONZALES, paternal grandmother, is petitioner.	**This petition is as to BENJAMIN ONLY.**
			Father: **SERGIO GONZALES**	**A competing petition for guardianship of all the minors was filed by the maternal grandmother was heard on 1/3/12.**
Cont. from			Mother: **AMBREA SANCHEZ**	**Also, please see related case on page 14. Petitioner is also requesting to be appointed as guardian of Benjamin's half sibling (they have the same father).**
	Aff.Sub.Wit.		Paternal grandfather: Sergio Anaya Maternal grandparents: not listed.	**1. Need *Notice of Hearing*.**
✓	Verified			**2. Need proof of personal service of the *Notice of Hearing* along with a copy of the *Petition for Appointment of Guardian*, or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on:** **a. Sergio Gonzales (father)** **b. Ambrea Sanchez (mother)**
	Inventory			
	PTC			
	Not.Cred.			
	Notice of Hrg	X		
	Aff.Mail			
	Aff.Pub.			
	Sp.Ntc.		Petitioner states mom is in rehab and dad is no longer in the home.	
	Pers.Serv.	X		**3. Need proof of service of the *Notice of Hearing* along with a copy of the *Petition for Appointment of Guardian*, or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on:** **a. Sergio Anaya (paternal grandfather)** **b. Maternal grandparents**
✓	Conf. Screen			
✓	Letters		**Court Investigator Charlotte Bien's Report filed on 12/12/11.**	
✓	Duties/Supp			
	Objections			
	Video Receipt			
	CI Report			
	9202			
✓	Order			
	Aff. Posting			**Reviewed by: KT**
	Status Rpt			**Reviewed on: 10/31/11**
✓	UCCJEA			**Updates:**
	Citation			**Recommendation:**
	FTB Notice			**File 22 - Gonzales**

Dept. 303, 9:00 a.m. Wednesday, January 4, 2012

16 Lalien Giglio & Lariassa Giglio (GUARD/P) Case No. 11CEPR00976

Atty Graffia, Jennifer (Pro Per – Paternal Aunt – Petitioner)

Petition for Appointment of Guardian of the Person (Prob. C. 1510)

Lalien Gigio (3)		
DOB: 3-30-08		
Larissa Giglio (1)		
DOB: 9-10-10		
	Aff.Sub.Wit.	
✔	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	X
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	X
✔	**Conf. Screen**	
✔	**Letters**	
✔	**Duties/Supp**	
	Objections	
	Video Receipt	
✔	**CI Report**	
✔	**Clearances**	
✔	**Order**	
	Aff. Posting	
	Status Rpt	
✔	**UCCJEA**	
	Citation	
	FTB Notice	

TEMPORARY EXPIRES 1-4-12

JENNIFER GRAFFIA, Paternal Aunt, is Petitioner.

Father: **PAUL GIGLIO**
- Personally served 11-1-11 re temporary hearing
- Signed a note nominating Petitioner for temporary custody
Mother: **CRYSTAL HARPER**
- Personally served 11-1-11 re temporary hearing
- Signed a note nominating Petitioner for temporary custody

Paternal Grandfather: Deceased
Paternal Grandmother: Yvonne Giglio
Maternal Grandfather: Wesley Eugene Harper
Maternal Grandmother: Deceased

Petitioner states both parents are incarcerated and have asked Petitioner to care for the girls. Petitioner and her husband also share a home with the Paternal Grandmother Yvonne Giglio in Rancho Santa Margarita, CA (Orange County). The girls had been with family friend Frank Underwood for approx. two months because of the parents' drug use, but none of the paternal relatives knew about this. The girls and the parents previously lived with Paternal Grandmother Yvonne Giglio in Fresno County, but she was forced to evict them due to drugs in approximately December 2010, and since then, they had not been aware of their whereabouts until now. Petitioner states the children have not received immunizations and their current residence with Mr. Underwood is unsanitary – he has many animals inside and out, including a pot belly pig, guinea pig, many cats and dogs. There is no crib in the home, no fenced play area, no toys, baby items stay outside overnight, etc. Mr. Underwood admits he is unemployed and struggling financially. Petitioner and her family can adequately care for the girls and has a room with a crib and toddler bed ready. They love the girls and hope for guardianship as soon as possible.

Orange County Court Investigator Nancy Ward filed a report on 12-20-11.

Fresno Court Investigator: Jo Ann Morris

NEEDS/PROBLEMS/COMMENTS:

<u>Note</u>: A competing petition by the Maternal Grandfather Wesley Harper and Step-Grandmother Kimberly Wilkins was dismissed at their request.

<u>Note</u>: Petitioner lives in Rancho Santa Margarita, CA (Orange County).

1. **Need Notice of Hearing.**

2. **Need proof of personal service of Notice of Hearing with a copy of the Petition at least 15 days prior to the hearing per Probate Code §1511 <u>or</u> consent and waiver of notice on:**
   - Paul Giglio (Father)
   - Crystal Harper (Mother)

   <u>Note</u>: Both parents signed notes nominating Petitioner for "temporary custody" and at the temporary hearing, the Court accepted a "Proof of Service" indicating personal service of notice regarding the <u>temporary</u> hearing; however, that document does not indicate that notice of <u>this</u> hearing and a copy of <u>this general petition</u> were served. The Notice of Hearing (GC-020) is a mandatory Judicial Council form.

3. **Need proof of service of Notice of Hearing with a copy of the Petition at least 15 days prior to the hearing per Probate Code §1511 <u>or</u> consent and waiver of notice on:**
   - Yvonne Giglio (Paternal Grandmother)
   - Wesley Eugene Harper (Maternal Grandfather)

Reviewed by: skc

Reviewed on: 12-19-11

Updates:

Recommendation:

File 16 - Giglio

Dept. 303, 9:00 a.m. Wednesday, January 4, 2012

17 Maria Evelyn Rivera Andasol **Case No. 11CEPR01110**

Atty Farah, Nadia (for Petitioner Flor Morena Alfaro De Lorreynaga)

Petition for Appointment of Temporary Guardianship of the Person

Age: 17 years DOB: 2/18/1994		
Cont. from		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	X
✓	Conf. Screen	
✓	Letters	
✓	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
✓	UCCJEA	
	Citation	
	FTB Notice	

Temporary granted ex parte on 12/21/11.
TEMPORARY EXPIRES 1/4/12.

GENERAL HEARING 2/15/2012

FLOR MORENA ALFARO DE LORREYNAGA, sister, is petitioner.

Father: **JOSE DIMAS RIVERA** – *deceased.*

Mother: **MARIA TERESA ANDASOL** – *deceased.*

Paternal grandparents: Deceased
Maternal grandfather: Deceased
Maternal grandmother: Sara Andasol

Petitioner states both of the minor's parents are deceased and she has no legal guardian to make decisions on her behalf. She is currently in Immigration proceedings and needs a guardian to assist her, make decisions on her behalf with respect to her immigration matter and overall care for her.

NEEDS/PROBLEMS/COMMENTS:

1. **Need *Notice of Hearing.***
2. **Need proof of personal service of the *Notice of Hearing* along with a copy of the *Temporary Petition* or *Consent and Waiver of Notice* on:**
   a. **Maria Evelyn Rivera Andasol (minor)**

Reviewed by: KT
Reviewed on: 12/21/11
Updates:
Recommendation:
File 17 - Andasol

Dept. 303, 9:00 a.m. Wednesday, January 4, 2012

18 Patrick Russell Paz (GUARD/P) **Case No. 11CEPR01115**

Atty Moore, Leslie (for Petitioner Rose Marie Parochette/paternal grandmother)

Petition for Appointment of Temporary guardianship of the Person.

Age: 9 years		
DOB: 12/29/2002		
Cont. from		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	X
✓	Conf. Screen	
✓	Letters	
✓	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
✓	UCCJEA	
	Citation	
	FTB Notice	

GENERAL HEARING 2/22/12

ROSE MARIE PAROCHETTI, paternal grandmother, is petitioner.

Father: **RICHARD PAZ**

Mother: **ANDREA DORA CRYSTAL BARRIOS**

Paternal grandfather: Albert Paz
Maternal grandfather: Mr. Barrios – *deceased*
Maternal grandmother: Bonita Burkett

Petitioner states there has been a long history of abuse and neglect of the minor at the hands of his mother and her boyfriend, Deon O'Shay Owens. Both have sold drugs out of the home where the minor lives. DCSF removed the minor from the home in November 2011. The minor was returned after a family maintenance plan was implemented. On 12/9/11 the mother's boyfriend took the minor to his great uncle and left him there. During Petitioner's visit with the minor at the uncle's home, the minor told her that mom's boyfriend hits and punches him with his fist, and has hit him with a hanger. Petitioner feels that the minor is in imminent danger because the mother and Deon have contacted the uncle and stated her Deon may come and pick up the minor.

NEEDS/PROBLEMS/COMMENTS:

Note: According to the Petition, Petitioner is a resident of Las Vegas, Nevada.

1. **Need *Notice of Hearing.***
2. **Need proof of personal service of the *Notice of Hearing* along with a copy of the *Temporary Petition* or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on:**
   a. **Richard Paz (father)**
   b. **Andrea Dora Crystal Barrios (mother)**

Reviewed by: KT
Reviewed on: 12/22/11
Updates:
Recommendation:
File 18 - Paz

19 The Cenci Family Trust (Trust) **Case No. 10CEPR00244**

Atty Sanoian, Joanne (for Petitioner Richard G. Cenci)
Atty Keeler, William (for former Trustee Terese McGee)
Atty Helon, Marvin (formerly for Esther Cenci *(now deceased))*
Atty Sullivan, Robert *(* for Bruce Bickel, successor trustee of Survivor's Trust)

***Ex parte* Application for Temporary Restraining Order Pending Outcome of Trial**

Age:		
DOD:		
Cont. from		
	Aff.Sub.Wit.	
√	Verified	
	Inventory	
	PTC	
	Not.Cred.	
√	Notice of Hrg	
	Aff.Mail	
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
√	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	X
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

RICHARD G. CENCI, through his attorney, Joanne Sanoian, is Petitioner**.**

BRUCE BICKEL, successor Trustee of the Esther Cenci Survivor's Trust, is Objector ("Objector").

<u>Petitioner requests</u> an immediate temporary restraining order ("TRO") on Bruce Bickel, to restrain him from the distribution of the net sale proceeds of the Bullard Avenue, Fresno real property and the sale proceeds of the 1931 Packard, until the outcome of trial set on 1/10/12 on Petitioner's 1st Amended Petition.

<u>Petition states</u>:

1. **Escrow on the Bullard Property is to close on 12/31/11;**
2. **The Packard driven by Bruce Bickel to an appraiser and could be sold at any time;**
3. **Trial Date on Petitioner's 1st Amended Petition has been set for 1/10/12;**
4. **Through his counsel of record, Bruce Bickel has indicated he will make several disbursements to pay creditors, trustee and attorney fees of Decedent Esther Cenci's estate in excess of $103K, and will ultimately distribute the sale proceeds to all beneficiaries of the survivor's trust;**
5. **A TRO is necessary to prevent Mr. Bickel from disbursing any sale proceeds, as Petitioner's 1st Amended Petition asks the court to compel Mr. Bickel to transfer the survivor's trust assets owed the bypass trust and for judgment against Terese Cenci McGee and Herman F. Cenci, beneficiaries of both trusts;**
6. **As such, the TRO is necessary until the outcome of trial;**
7. **At the 11/14/11 hearing on the lis pendens, the court indicated that Petitioner Cenci could have filed a restraining order rather than a *lis pendens*;**

<u>See attached page</u>

<u>NEEDS/PROBLEMS/COMMENTS</u>:

<u>Note</u>:

- **This matter came before the Court *ex parte* on 12/22/11, and the Court set the matter for hearing on 1/4/12.**

Reviewed by: NRN	
Reviewed on: 12/28/11	
Updates:	
Recommendation:	
File 19 - Cenci	

Dept. 303, 9:00 a.m. Wednesday, January 4, 2012

Cont'd:

8. **Attached to the Declaration of Lisa Horton, attached in support of the instant Petition, are four letters in which Mr. Bickel's counsel indicates Mr. Bickel will not agree to distribute the funds until the 1st Amended Petition is resolved, if Petitioner Cenci dismissed Bickel from the action;**
9. **Until trial is concluded, however, Mr. Bickel could distribute all of the sale proceeds, which would cause great and irreparable injury to Petitioner and other beneficiaries who have committed no wrongdoing; once the money is gone, there would be no reason or purpose for trial if there are no funds to recover;**
10. **Furthermore, as stated in the Declaration of Gayle Merritt CPA (attached to the instant Petition), Bruce Bickel will avoid paying any obligations to the bypass trust even though Ms. Merritt has found that "the preliminary net amount due and owing from the survivor's trust to the bypass trust is in excess of $287K….this amount should be transferred back to the bypass trust."** ***(Page 3, lines 2-4 of Gayle Merritt Decl.)*****;**
11. **C.C.P. §526 and 527 provide grounds for issuance of a TRO, which are the same grounds required for an injunction, in pertinent parts as follows:**

Per C.C.P. §526:

(a) An injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
(2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.

C.C.P. §527 also allows a preliminary injunction or TRO to be granted at any time before a judgment on a complaint and upon a showing that sufficient grounds exist for granting the TRO.

Petitioner requests a TRO restraining Mr. Bickel from distributing, disbursing, or making any payments to creditors from any of the net proceeds from the sales of the Bullard Ave. residence and 1931 Packard until the outcome of trial on this matter.

See attached page

Cont'd:

Opposition to Ex parte Application for TRO, **filed 12/22/11, states:**

- **Petitioner Cenci's *ex parte* Petition fails to establish that he (Petitioner) is entitled to the relief sought;**
- **Even if Petitioner was successful on the merits of his 1st Amended Petition, he still would not be entitled to an order directing Objector Bickel to turn over assets to the survivor's trust, and therefore there is no justification for the instant Petition;**
- **There is no dispute that the Bullard residence and 1931 Packard are properly titled as assets in the survivor's trust;**
- **Petitioner Cenci asserts that should he obtain a judgment against the two of the survivor's trust beneficiaries, their interests in the survivor's trust is the only asset he could use to satisfy the judgment;**
- **This court's 11/14/11 order expunging the *lis pendens* shows that Petitioner did not have a claim to the title of the property, but was merely seeking a money judgment; as such, he also has no claim to the sale proceeds of the Bullard Ave. residence other than as a potential unsecured creditor, who stands behind the statutory creditors;**
- **Further, Petitioner's submitted Declaration of Gayle Merritt, C.P.A. fails to establish that Petitioner has a claim to assets of the survivor's trust, and no basis established for Ms. Merritt's belief that the survivor's trust holds monies belonging to the bypass trust; her declaration is premised on the false assumption to the Bank of America account is a survivor's trust asset;**
- **Objector Bickel has no plans of distributing the survivor's trust proceeds to the residual beneficiaries prior to the completion of the litigation between said beneficiaries, and has in fact offered to stipulate that no distributions to beneficiaries will be made pending outcome of trial if Petition would withdraw the instant *ex parte* Petition;**
- **Petitioner Cenci has ignored Mr. Bickel's offer, instead demanding that no statutory creditors be paid; however, should Petitioner succeed at trial, the most he would potentially be entitled to is an attachment of the remaining beneficiaries' share of the residual distribution; Objector has repeatedly informed Petitioner's counsel of this fact;**
- **Objector Bickel will not agree to postpone payments to creditors pending trial, because even if Petitioner succeeds at trial, payment to the statutory creditors takes preference over any money judgment that Petitioner Cenci may receive against remaining survivor's trust beneficiaries (see PrC §11420 (setting forth priorities of payments to creditors, and PrC §19001 (which makes §11420 applicable to trusts);**
- **Each of the creditors identified in Attorney Lisa Horton's Declaration are entitled to priority and must by statute be paid before Petitioner receives anything by way of his Petition;**

SEE ATTACHED PAGE

Cont'd:

- **Because Petitioner cannot jump in front of statutory creditors, the relief he seeks herein in improper and therefore the instant Petition should be denied;**
- **Furthermore and finally, Petitioner's application of C.C.P. §526(a)(1) and (2) is inapplicable to the instant Petition because 1) §526 (a)(1) provides that an injunction is appropriate when it appears by the *complaint (emphasis added in Opposition)* that plaintiff is entitled to the relief demanded and the requested relief seeks to enjoin an act; in his 1st Amended Petition, Petitioner has asserted no cause of action against Mr. Bickel, nor does that Petition contain a prayer for injunctive relief and 2) §526 (a)(2) is also inapplicable because the instant Petition alleges only possible injury without competent evidence, in the form of payments to creditors and distributions to beneficiaries; Petitioner's 1st Amended Petition seeks a money judgment against the two of the survivor's trust remainder beneficiaries (Terese and Herman Jr. only, Esther Cenci has been dismissed from the Petition per a 12/8/11 *Request for Dismissal*) – not against the survivors trust or Objector Bickel;**
- **Petitioner's application for a TRO is also procedurally defective, as CRC 3.1202(c) requires an "affirmative factual showing in a declaration containing competent testimony based on personal knowledge or irreparable harm, immediate danger, or other statutory basis for granting *ex parte* relief." No such declaration has been submitted; but rather, Petitioner states that his attorney will certify in court and under oath that without the TRO, Mr. Bickel will in all likelihood distribute the assets before the outcome of trial. However, the promise to show irreparable harm at a later time does not satisfy the requirements of this Rule of Court.**
- **This court will hear Mr. Bickel's Motion for Judgment on the Pleadings on 1/5/12; said motion seeks an order dismissing Objector Bickel on the grounds that no cause of action has been asserted against him and that, as a matter of law, Petitioner Cenci is not entitled to an order directing him to turn over the survivor's trust assets as a remedy for the wrongful acts alleged in the 1st Amended Petition.**
- **Objector Bickel requests, for the foregoing reasons, that the court deny the instant *ex parte* Petition in its entirety.**