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. Thursday, January 5, 2012

1 Charles George Martin (Estate) Case No. 03CEPR01109

Atty Ramseyer, Ryan A. (for Charles Duane Martin – Successor Administrator – Petitioner)

Atty Ramirez, Jr., Edward R. (for Maria Elena Martin – Former Administrator)

Order to Show Cause Re: Contempt

DOD: 6-2-03			NEEDS/PROBLEMS/COMMENTS:
			<u>Continued to 1-12-12</u>
			See Order Continuing Hearing on Order to Show Cause re Contempt and for Service upon Alleged Contemnor's Attorney filed 12-21-11.
	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: skc
	Status Rpt		Reviewed on: 12-21-11
	UCCJEA		Updates:
	Citation		Recommendation:
	FTB Notice		File 1 - Martin

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

2A **Louis Brosi, Sr. (Trust)** **Case No. 07CEPR01213**

Atty Keeler Jr., William J. (of DAK, for Cindy Snow Henry – Trust Beneficiary – Petitioner)
Atty Klassen, Kenton J. (of DAK, also for Cindy Snow Henry – Trust Beneficiary – Petitioner)
Atty Abrams, Robert C. (of Pascuzzi, Moore & Stoker, for Louis Brosi, Jr. – Trustee)
Atty Jaech, Jeffrey A. (of Caswell Bell, formerly for Louis Brosi, Jr. – Trustee)
Atty Paloutzian, Dirk (of BMJ, formerly for Louis Brosi, Jr. – Trustee)

Notice of Motion and Motion to Compel Performance Under Settlement Agreement

Louis Brosi, Sr.
DOD: 8-1-79

Stella Brosi
DOD: 10-29-05

Cont. from 051011, 070511, 082311, 091911 (Status Conf.), 101811, 121511

	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	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

CINDY SNOW HENRY, Trust Beneficiary, is Petitioner.

Petitioner states on 3-5-09 the parties reached agreement and the settlement was placed on the record with parties and counsel present. **Petitioner seeks to have the court order Louis Brosi III to carry out the acts necessary to partition the property into three parcels anticipated and directed by the settlement.**

Petitioner states the land is still owned jointly by several parties: Louis Brosi, Jr., Doris Brosi, Petiitoner Cindy Snow Henry, and her brother Robert Snow; the settlement provided for partition of the property into three parcels.

Petitioner requests that the court compel Louis Brosi III to partition the parcel and pay the associated costs. Petitioner states Louis Brosi III has had more than two years, but to Petitioner's knowledge has made no effort to perform. Petitioner states that upon partition, the property can be used to earn income, provde collateral, or be sold for Petitioner's benefit or to pay off debts against the property.

Petitioner seeks relief to prevent the diminution of value of the property to be received by Petitioner. Petitioner states that during the past two years, what Louis Brosi III has effectively done by his failure to act or act in good faith is to run up interest charges against Petitioner and/or her property. Petitioner alleges that he has intentionally failed ot act in good faith and his true intent is to "steal" the property from Petitioner by his inaction.

Petitioner requests that the court order Louis Brosi III to take those actions necessary to complete the partition described in the settlement agreement and to present to Petitioner within 120 days the documents necessary to implement the division.

Louis Brosi, Jr.'s Opposition filed 4-28-11 states new issues have arisen since settlement.

SEE PAGE 2

NEEDS/PROBLEMS/COMMENTS:

Minute Order 5-10-11:
The matter is continued to 7-5-11 to allow Mr. Klassen an opportunity to receive the information from both counsel. Matter also set for status.

Minute Order 7-5-11: Matter continued to 8-23-11.

Minute Order 8-23-11:
Mr. Franco requests additional time to file a motion. The Court directs Mr. Franco to file his motion by 9-27-11. The Court sets a hearing on the pending motion for 10-18-11.

Note: No motion has been filed.

Minute Order 10-18-11: Mr. Franco informs the Court that Mr. Abrams will be substituting out as counsel. Mr. Franco further advises that Mr. Zangle is out of the country. The Court continues the matter to 12-15-11 and vacates the 11-14-11 hearing date.

Minute Order 12-15-11 (Motion to Compel): Mr. Franco informs the Court that an appraisal should be done by the end of January. Matter continued to 1-5-12.

Minute Order 12-15-11 (Status of Motion from 8-23-11): Mr. Franco informs the Court that they have filed an acceptance of the creditor's claim and are ready to proceed.

Note: Examiner notes that this statement appears to apply to the Estate of Thomas Brosi rather than this Louis Brosi, Sr., Trust case. Atty Franco represents Louis Brosi, III in the Estate of Thomas Brosi (Page 3).

Updates:

Contacts: Reviewed 12-22-11

Recommendation:

Reviewed by: skc

File 2A - Brosi

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

2A Louis Brosi, Sr. (Trust) Case No. 07CEPR01213

Atty Keeler Jr., William J. (of DAK, for Cindy Snow Henry – Trust Beneficiary – Petitioner)
Atty Klassen, Kenton J. (of DAK, also for Cindy Snow Henry – Trust Beneficiary – Petitioner)
Atty Abrams, Robert C. (of Pascuzzi, Moore & Stoker, for Louis Brosi, Jr. – Trustee)
Atty Jaech, Jeffrey A. (of Caswell Bell, formerly for Louis Brosi, Jr. – Trustee)
Atty Paloutzian (of BMJ, formerly for Louis Brosi, Jr. – Trustee)

Notice of Motion and Motion to Compel Performance Under Settlement Agreement

Summary (Continued):

Louis Brosi, Jr.'s Opposition filed 4-28-11 states new issues have arisen since settlement:

- In addition to the partition, the settlement required that Petitioner's parcel would secure three deeds of trust with interest only payable quarterly by Petitioner and all due in five years, including:
  - Note secured by 1st deed of trust payable to Louis Brosi III for $117,000.00
  - Note secured by 2nd deed of trust payable to Louis Brosi, Sr., and Doris Brosi for $50,000.00
  - Note secured by 3rd deed of trust payable to Louis Brosi III for 1/3 of the partition costs, capped at $30,000.00. (Louis Brosi III was to front the costs for the parcel maps.)

- Petitioner has failed to make payments on any of the notes to date.

- Respondent is informed and believes that Louis Brosi III does not have the financial ability to front the costs as originally anticipated.

- The $30,000.00 cap on Petitioner's note for 1/3 of the cost of the maps is insufficient to cover her 1/3 share.

- There are required use easements and road and other public dedications along Chestnut that should be excluded from the gross parcel prior to determining the size of each of the three parcels.

- The trust has no funds and no income. Louis Brosi, Jr., and his wife Susan Brosi have been advancing personal funds annually, and Louis Brosi, Jr., is not receiving trustee fees for administering the trust.

Respondent concludes that based on Petitioner's non-performance and non-compliance with this court's order, her motion to compel should be denied.

Respondent requests the court order mediation to resolve the details of the new issues.

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

2B **Louis Brosi, Sr. (Trust)** **Case No. 07CEPR01213**

Atty Saldana, Val W. (of Lang, Richert & Patch)
Atty Keeler Jr., William J. (of DAK, for Cindy Snow Henry – Trust Beneficiary – Petitioner)
Atty Klassen, Kenton J. (of DAK, also for Cindy Snow Henry – Trust Beneficiary – Petitioner)
Atty Abrams, Robert C. (of Pascuzzi, Moore & Stoker, for Louis Brosi, Jr. – Trustee)
Atty Jaech, Jeffrey A. (of Caswell Bell, formerly for Louis Brosi, Jr. – Trustee)
Atty Paloutzian, Dirk (of BMJ, formerly for Louis Brosi, Jr. – Trustee)

Status Hearing

Louis Brosi, Sr. DOD: 8-1-79		
Stella Brosi DOD: 10-29-05		
	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	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

NEEDS/PROBLEMS/COMMENTS:

Note: This status hearing may be a calendar error; however, because there appears to be a new attorney/party listed (Val W. Saldana of Lang, Richert & Patch), Examiner did not remove the hearing from the calendar.

Updates:

Contacts: Reviewed 12-22-11

Recommendation:

Reviewed by: skc

File 2A - Brosi

2B

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

3 Thomas Eugene Brosi (Estate) Case No. 08CEPR00559

Atty Franco, Paul C. (for Louis C. Brosi, III – Brother – Administrator)
Atty Schneider, David D. (for Creditor McKenzie Farms, LLC – Objector)

Amended First and Final Account, Report of Administrator and Petition for Dismissal of Probate Proceeding

DOD: 5-8-08

Cont. from 071211, 082311, 101811, 121511

	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	

LOUIS C. BROSI, III, brother and Administrator with full IAEA without bond, is Petitioner.

Account period: 5-8-08 through 3-30-11

Accounting:	$	1,042,500.00
Beginning POH:	$	1,042,500.00
Ending POH:	$	0.00

Petitioner states the estate is insolvent and requests that the court dismiss this probate action.
Petitioner states:

- 15 creditor's claims were filed totaling $272,306.96. No creditors have been paid; all claims were rejected.

  Update: On 12-13-11, Petitioner filed an Allowance of the California State Board of Equalization's Claim of $121,848.06.

- Inventory and Appraisal Partial No. 1 reflects Decedent's 50% interest in HB Partners LLC valued at $282,500.00.
- Inventory and Appraisal Partial No. 2 reflects Decedent's interest in two parcels of real property at Alluvial and Chestnut in Fresno valued at $760,000.00.
- Inventory and Appraisal Partial No. 3 reflects Decedent's 100% interest in Tommy Rock Landscaping and Nursery Supplies, Inc., valued at $0.00.
- The LLC owned real property on McCall in Selma that carried a note for $240,000.00. The estate and the LLC's other partner could not afford the monthly payments or the upcoming balloon payment, so the McCall property was transferred to a third party for the amount of the debt to avoid foreclosure. At the time of the transfer, the estate was in default of the note for over $56,000.00.
- The Decedent's interest in the Alluvial property was challenged in a civil action and the settlement resulted in the estate being divested of Decedent's interest in the property without reimbursement or consideration.
- The corporation had not paid rent to the property owners (the beneficiaries herein) since Decedent's death; the nursery inventory was abandoned and much has already died. Other stock was taken by the landlord and used to offset unpaid rent once the property and stock were abandoned by the corporation and estate.

SEE PAGE 2

NEEDS/PROBLEMS/COMMENTS:

Note: The California Attorney General filed a Notice of Pendency of Action regarding a rejected creditor's claim. Court records indicate a dismissal was filed, but a case management conference appears to remain scheduled for 12-27-11.

Minute Order 8-23-11: Counsel *[Paul Franco for Administrator]* advises the Court that the Moxley matter *[Opposition by Creditor McKenzie Farms]* is gone, and the only issue that is being dealt with is the issue regarding the Attorney General. Counsel further advises that he has been trying to reach a resolution with the Attorney General. Matter continued to 10-18-11. *(The matter was later continued to 12-15-11 and 1-5-12.)*

As of 12-22-11, the following issues remain:

1. **Decedent's 100% interest in the corporation is valued at $0.00 and Petitioner states that the stock died and was abandoned after Decedent's death; however, Examiner notes that the appraisal should reflect the value as of the Decedent's date of death, and any abandonment or disposition after that date may be considered a loss to the estate. Need clarification.**
2. **Petitioner states the McCall property was *transferred to a third party* to avoid foreclosure. The court may require clarification and may consider this action an unauthorized distribution.**
3. **Petitioner refers to Decedent's vehicles that were returned to creditors to satisfy claims; however, no vehicles were inventoried. If the vehicles were part of the corporation, their values would have been reflected in that appraisal. Further, such losses are not reflected in any schedules. Need clarification.**

Updates:

Contacts: Reviewed 10-7-11

Recommendation:

Reviewed by: skc

File 3 - Brosi

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

3 Thomas Eugene Brosi (Estate) Case No. 08CEPR00559
Atty Franco, Paul C. (for Louis C. Brosi, III – Brother – Administrator)
Atty Schneider, David D. (for Creditor McKenzie Farms, LLC – Objector)

Amended First and Final Account, Report of Administrator and Petition for Dismissal of Probate Proceeding

SUMMARY (Continued):

- The corporation was involved in litigation to recover assets that were allegedly taken from the corporation. Minimal property was recovered. Further, the corporation was audited by the State Board of Equalization and charged $142,991.59 for unpaid sales tax. "In any event, the corporation is insolvent and does not anticipate the recovery of any significant assets which would change this."

- The Decedent's truck was returned to the creditor, Ford Motor Company, to resolve that debt. Other finance creditors had their property returned to them, such as bobcats and tractors, to satisfy their claims.

- No assets remain and accounting has been waived by the beneficiaries.

Petitioner prays for an Order that the probate be dismissed in its entirety.

Notice of Pendency of Action filed 6-20-11 by Attorney General Kamala Harris states that on 6-13-11, the California State Board of Equalization filed a complaint on the Creditor's Claim after its rejection in this probate case as Fresno Superior Court Case 11CECG02043. <u>There is a court date in that matter set for 10-24-11</u>.

Examiner notes that Court records indicate a dismissal was filed, but a case management conference appears to remain scheduled for 12-27-11. Need clarification.

<u>Minute Order 10-18-11</u>: Mr. Franco informs the Court that Mr. Abrams will be substituting out as counsel. Mr. Franco further advises that Mr. Zangle is out of the country. The Court continues the matter to 12/15/11 and vacates the 11/14/11 hearing date. Continued to 12/15/11.

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

4 Margaret Archuleta (CONS/PE) **Case No. 10CEPR00897**

Atty Motsenbocker, Gary L (for Conservator Antoinette Hernandez)

Probate Status Hearing Re: Filing of Inventory and Appraisal

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	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

ANTOINETTE HERNANDEZ was appointed conservator of the person and estate on 12/14/10.

Letters issued on 5/6/11.

Inventory and Appraisal filed on 8/19/11 showing an estate valued at $110,115.33.

Next status hearing for the filing of the first account is scheduled for October 4, 2012.

NEEDS/PROBLEMS/COMMENTS:

OFF CALENDAR. **Inventory and Appraisal filed on 8/19/11.**

Reviewed by: KT
Reviewed on: 12/20/11
Updates:
Recommendation:
File 4 – Archuleta

5 Richard Howard Smith (Estate) Case No. 11CEPR00704
Atty McBride, Julia C (of Valencia, for Holly Sweeney – Daughter – Petitioner)
Atty Burnside, Leigh W (of DAK, for Charlene Smith – Surviving Spouse – Objector)
Petition for Letters Administration (Prob. C. 8002, 10450)

DOD: 8-13-10		
Cont. from 091511, 111611		
	Aff.Sub.Wit.	
✔	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
✔	**Notice of Hrg**	
✔	**Aff.Mail**	W/O
	Aff.Pub.	X
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	X
	Duties/Supp	X
	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	X
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

HOLLY SWEENEY, daughter, is Petitioner and requests appointment as Administrator with Limited IAEA and bond set at $6,000.00.

Limited IAEA – *Need publication*

Decedent died intestate

Residence: Fresno
Publication: *Need publication*

Estimated value of estate: $0

Probate Referee: Steven Diebert

Petitioner also filed a Creditor's Claim alleging misappropriation of trust assets by the decedent.

Objection filed by Charlene Smith, surviving spouse, states there is a will and codicil (attached) that names Objector as the nominated executor. However, there are no assets subject to a probate administration. Objector states the estate consisted of joint tenancy assets including real property and bank accounts, all of which passed to Objector by right of survivorship.

Therefore, there is no need for a probate administration.

Further, even if the decedent had died intestate, Objector has priority of appointment over Petitioner pursuant to Probate Code §§ 8461 and 8462.

Objector prays for an order:

1. Denying the Petition in its entirety;
2. Awarding costs incurred to Objector; and
3. Granting any and all other relief the Court deems just and proper.

NEEDS/PROBLEMS/COMMENTS:

<u>Note</u>: This matter has been continued twice at Petitioner's request; however, nothing further has been filed by Petitioner.

<u>The following issues remain for Petitioner</u>:

1. **Need clarifying information in support of this *Petition*, which states at Item 3(c) that there is no property in the estate without explaining the reason the *Petition* has been filed. *Creditor's Claim* filed 8/12/2011 may provide some information, as the claimant is the Petitioner and "RH/PH Smith RL Trust A & B dated 11/7/1995" in the amount of $650,000.00; *Creditor's Claim* indicates the claimants are the Beneficiary and Trustee of the Irrevocable Trust, the dates of the claim are 2001 through 2010, and the facts supporting the claim are stated as follows: "Amounts owed to Richard Howard Smith and Patricia H. Smith Revocable Living Trust, dated 11/7/1995, including subtrusts A and B, by Decedent due to misappropriation of assets of the Trust. The damages are unascertained at this time. The figure of $650,000.00 represents the original value of Trust B plus estimated net appreciation/gains relating to said assets."**
2. **Item 8 of the *Petition* does not state the relationship to Decedent of the persons listed.**
3. **Need *Affidavit of Publication* pursuant to Probate Code §§ 8120 – 8124, and Local Rule 7.9.**
4. **Need *Duties and Liabilities of Personal Representative* form, and *Confidential Supplement to Duties and Liabilities of Personal Representative* form, pursuant to Local Rule 7.10.1 and Probate Code § 8404.**
5. **Need proposed order and proposed letters.**

<u>For Objector</u>:

1. **The Court may require clarification regarding the attorney's fees requested.**
2. **Need proposed order.**

Reviewed by: LEG / skc	
Reviewed on: 12-21-11	
Updates:	
Recommendation:	
File 5 - Smith	

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

7 Cieanna Catuiza (GUARD/P) **Case No. 11CEPR00966**

Atty Hopper, Cindy J (for Petitioners Maria Simas and Anthony Simas)

Atty Jones, Angel M (pro per Objector/mother)

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

Age: 2 years
DOB: 8/10/09

Cont. from

	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
✓	Notice of Hrg	
	Aff.Mail	
	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	

TEMPORARY EXPIRES 1/5/12

MARIA SIMAS, paternal grandmother and **ANTHONY SIMAS,** paternal step-grandfather, are petitioners.

Father: **MICHAEL CATUIZA, Jr**. – *personally served on 10/27/11*.

Mother: **ANGEL JONES** – *personally served on 10/27/11*.

Paternal grandfather: Arthur Catuiza – *served by mail on 12/20/11*.
Maternal grandfather: Unknown
Maternal grandmother: Mary Jones – *deceased.*

Petitioners state the minor has resided in their care since she was approximately 3 days old however she has maintained a relationship with her parents. The father was also residing with the petitioners up until October 17, 2011 when they state they kicked him out due to his continued drug use. Petitioners allege both parents are addicted to drugs and smoke in the home while the minor is present. Recently while the minor was in the care of her mother or her maternal great grandmother she was molested. On 9/8/11 Petitioners state they took the minor to the doctor and the doctor found there was possible sexual molestation.

Objections of Angel Jones, mother, filed on 12/15/11 states she can provide the minimal standards of care. She has no mental or physical disabilities. She has worked full time at the IRS for the past ten years and has her own apartment. She has no criminal history. Included with the objections is a drug test taken 11/7/11 showing negative results for all drugs tested.]

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

NEEDS/PROBLEMS/COMMENTS:

1. **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. **Unknown maternal grandfather.**

For Objector:

1. **Need proof of service of the Objections on:**
   a. **Maria Simas (petitioner/paternal grandmother)**
   b. **Anthony Simas (petitioner/paternal step-grandfather)**
   c. **Cindy Hopper (attorney for petitioners)**

Reviewed by: KT

Reviewed on: 12/21/11

Updates:

Recommendation:

File 7 - Catuiza

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

8 John Barry Prendergast aka John Barry aka John Prendergast (Estate) Case No. 11CEPR01022
Atty Sullivan, Robert L (for Laurie Barry Prendergast – Petitioner)

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

DOD: 1/30/11

Cont. from

	Aff.Sub.Wit.	√
√	Verified	
	Inventory	
	PTC	
	Not.Cred.	
√	Notice of Hrg	
√	Aff.Mail	w/o
√	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	

LAURIE BARRY PRENDERGAST, surviving spouse and named executor without bond, is Petitioner.

Petitioner is a resident of Centre Island, New York.

Full IAEA – o.k.

Will dated: 8/22/06

Residence – Centre Island, New York
Publication – Fresno Business Journal

Estimated value of estate:
Real Property: $200,000.00

Total: $200,000.00

PROBATE REFEREE: STEVEN DIEBERT

NEEDS/PROBLEMS/COMMENTS:

1. **Petitioner is a resident of New York state; Court may require bond if proposed personal representative resides outside of California, even if the will waives bond, pursuant to CA Rule of Court 7.201(b) and Cal. Prob. C. § 8571**

NOTES:

- **This is an ancillary probate proceeding with the primary proceeding taking place in New York state, as Decedent's Will was executed in New York under that state's laws.**
- **Petitioner attaches Exemplification of Probate Petition, Last Will of Decedent, Letters Testamentary issued 9/22/11 to Petitioner in the Surrogate's Court of the County of Nassau, New York, as well as that Court's *Decree of Probate*, which indicates the Court's satisfaction with the genuineness of the Will and the validity of its execution. (PrC §6113(b)).**
- **Subject real property of this petition is located in Tollhouse, CA.**

Reviewed by: NRN
Reviewed on: 12/21/11
Updates:
Recommendation:
File 8 - Prendergast

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

9 **Madeline Juliette Hurley (Estate)** **Case No. 11CEPR01043**

Atty **Boyett, Deborah K. (for Jack C. Hurley – Son – Petitioner)**

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

DOD: 10-28-11			**JACK C. HURLEY**, Son and named alternate executor without bond, is Petitioner. **RANDALL G. HURLEY**, named alternate co-executor, declines to serve. Full IAEA – ok Will dated 12-15-94 Residence: Fresno Publication: Fresno Business Journal **Estimated value of estate:** Personal property: $214,018.76 **Probate referee: Rick Smith**
	Aff.Sub.Wit.	S/P	
✔	**Verified**		
	Inventory		
	PTC		
	Not.Cred.		
✔	**Notice of Hrg**		
✔	**Aff.Mail**	W	
	Aff.Pub.	X	
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
✔	**Letters**		
✔	**Duties/Supp**		
	Objections		
	Video Receipt		
	CI Report		
	9202		
✔	**Order**		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		

NEEDS/PROBLEMS/COMMENTS:

<u>Note</u>: Letters submitted 12-21-11 are signed by the Petitioner but are not dated.

Reviewed by: skc

Reviewed on: 12-21-11

Updates: 12-23-11

Recommendation: SUBMITTED

File 9 - Hurley

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

10 Kyle Yang Special Needs Trust (SNT) Case No. 11CEPR01045

Atty Bell, Melinda S., sole practitioner of San Juan Capistrano (for Lee Ann Hitchman and Bruce Hitchman, professional fiduciaries, proposed SNT Trustees)

Atty Haselhoff, Otto L., sole practitioner of Santa Monica (for Applicant Chong Yang, Guardian Ad Litem for Kyle Yang, proposed SNT Beneficiary)

Petition for Order Establishing Special Needs Trust for Minor Kyle Yang (Probate Code § 3600 et seq.; C.R.C. 7.903)

Age: 11 years	
DOB: 8/11/2000	
Cont. from 121311	
Aff.Sub.W	
✓ Verified	
Inventory	
PTC	
Not.Cred.	
✓ Notice of Hrg	
✓ Aff.Mail/ Fax	
Aff.Pub.	
Sp.Ntc.	
Pers.Serv.	
Conf. Screen	
Letters	
Duties/S	
Objection	
Video Receipt	
CI Report	
9202	
Order	X
Aff. Post	
Stat Rpt	
UCCJEA	
Citation	
FTB Notc	

CHONG YANG, Guardian ad Litem appointed on 11/27/2011 in Fresno Superior Court Case #07CECG03870 for **KYLE YANG**, is Petitioner.

Petitioner requests an order under Probate Code §§ 3600 – 3613 establishing a Special Needs Trust with Kyle Yang as the proposed beneficiary, to be funded with the proceeds of a litigation settlement in Fresno Superior Court Minor's Compromise Case #07CECG03870, for the following reasons:

- Kyle Yang is a minor who was involved in a house fire and sustained severe and extensive second and third degree burns to his face, neck, and both upper extremities which cover 18% of his total body surface; he has been diagnosed with Post-Traumatic Stress Disorder, Major Depressive Disorder, Reading Disorder, and Insomnia which are serious and disabling conditions;
- Kyle may be eligible to receive Federal Supplemental Security Income (SSI) and is currently receiving Medi-Cal benefits in order to meet his basic medical needs; because these public benefits are "needs-based," outright distribution of assets to Kyle will result in his losing eligibility for vital public benefits unless the assets are directed to a special needs trust (SNT);
- A claim was filed on behalf of Kyle by and through the Petitioner, his Guardian ad Litem, in Fresno Superior Court Minor's Compromise Case #07CECG03870; the litigation has been settled and after payments of fees, liens and expenses from the settlement, Kyle will receive **~$229,082.06**;
- The establishment of the SNT is necessary to receive the settlement assets and to provide for Kyle's current and future needs while preserving his eligibility for public benefits;
- Petitioner seeks an order from this Court that the assets from the settlement be paid to the Trustees of the **KYLE YANG SPECIAL NEEDS TRUST** (*copy attached as Exhibit B*), and an order that the proposed Trustees are authorized to sign the proposed SNT as the Trustees;
- Petitioner proposes that **LEE ANN HITCHMAN** and **BRUCE HITCHMAN**, licensed professional fiduciaries, be named the initial Trustees of the SNT (signed *Consent to Serve as Trustees* was filed 12/2/2011);
- Petitioner requests an order that the Trustees post bond in the amount of **$259,551.00**;

~Please see additional page~

NEEDS/PROBLEMS/COMMENTS:

<u>Note</u>: *Minute Order* dated 12/13/2011 from the hearing on the *Ex Parte Application for Order to Specially Set Hearing Date, etc*., states Mr. Haselhoff and Ms. Bell appear by CourtCall. Court states that notice will be deemed for the next hearing on 1/5/2012.

<u>Note</u>: Signed *Waiver of Notice* by the Department of Mental Health was filed on 12/5/2011, and signed *Waiver of Notice of Hearing* by the Department of Developmental Services was filed on 12/12/2011.

~Please see additional page~

Reviewed by:	LEG
Reviewed on:	12/27/11
Updates:	
Recommendation:	
File 10 - Yang	

Petitioner states:

- The proposed SNT is to be established pursuant to and meets the requirements of 42 USC 1369p(4)(A), as Kyle Yang is under age 65 and is "disabled," and the proposed SNT provides that on Kyle's death or termination of the SNT the state Medicaid agency (Medi-Cal) will receive reimbursement for all medical assistance provided to him.

- The proposed SNT meets the requirements of Probate Code §§ 3602 – 3613 as follows:
  1. The minor with a disability has a disability that substantially impairs the individual's ability to provide for the individual's own care and constitutes a substantial handicap; Kyle Yang is disabled due to the injuries described in the *Petition*, and these conditions profoundly impair his ability to provide for his basic daily living needs and support and to independently perform his activities of daily living;
  2. The minor with a disability is likely to have special needs that will not be met without the trust; without the SNT in place, Kyle's special needs including but not limited to modest payments for personal care assistance, supportive services, supplemental medical services and other palliative care will not be met; in the future, Kyle may also require assistance and planning help, including independent living skills training, travel training, and vocational training, if he is to achieve maximum independence and functioning; such services would be characterized as special needs that Medi-Cal would not cover or for which only limited Medi-Cal services would be available;
  3. Money to be paid to the SNT does not exceed the amount that appears reasonably necessary to meet the special needs of the minor or person with a disability; in view of Kyles' serious disability and lack of other resources to pay for specialized care, the funds that will form the corpus of the SNT appear reasonably necessary for Kyle's special needs; the cost of Kyle's future care is far greater than the amount of assets being funded to the SNT.

- The proposed SNT complies with CA Rule of Court 7.903(c) as follows:
  1. It does not contain a "no-contest" provision;
  2. It prohibits modification or revocation without court approval;
  3. It clearly identifies the Trustees and any other person with authority to direct the Trustees to make disbursements;
  4. It prohibits investments by the Trustees other than those permitted under Probate Code § 2574;
  5. It requires the Trustees and any other person with authority to direct the Trustees to make disbursements to post bond in the amount required under Probate Code §§ 2320 – 2335;
  6. It requires the Trustees to file accounts and reports for court approval in the manner and frequency required by Probate Code §§ 1060 – 1064 and 2620-2628;
  7. It requires court approval of changes in Trustees and a court order appointing any successor Trustee;
  8. It requires that compensation of the Trustee or the attorney for the Trustee to be in just and reasonable amounts that must be fixed and allowed by the court.

- Probate Code § 3604 requires that any medical liens be satisfied prior to the funding of a special needs trust; the Medi-Cal lien in the amount of **$13,250.00** shall be paid prior to the funding of the SNT *(please see copy of the lien reduction letter from the Department of Health Care Services attached as Exhibit B to Declaration of Otto L. Haselhoff in Response to Department of Health Care Services' Letter of Concern filed 12/12/2011).*

~Please see additional page~

Petitioner requests the Court make an Order as follows:

1. That the **KYLE YANG [IRREVOCABLE] SPECIAL NEEDS TRUST** is established, and that **LEE ANN HITCHMAN** and **BRUCE HITCHMAN** are ordered to execute it as Trustees;
2. That the Court has continuing jurisdiction and supervision over the **KYLE YANG [IRREVOCABLE] SPECIAL NEEDS TRUST**;
3. That **LEE ANN HITCHMAN** and **BRUCE HITCHMAN** shall serve as the initial Trustees with bond set in the amount of **$259,551.00**;
4. That **KYLE YANG** has a disability that substantially impairs his ability to provide for his own care or custody and constitutes a substantial handicap;
5. That **KYLE YANG** is likely to have special needs that will not be met without the Trust;
6. That money to be paid to the Trust does not exceed the amount that appears reasonably necessary to meet Kyle Yang's special needs; and
7. That payment of **$229,082.06** due Kyle Yang in the Fresno Superior Court Minor's Compromise Case #07CECG03870 shall be paid to the Trustees of the **KYLE YANG [IRREVOCABLE] SPECIAL NEEDS TRUST.**

Declaration of Otto L. Haselhoff in Response to Department of Health Care Services' Letter of Concern filed 12/12/2011 states he is lead counsel for this case and is familiar with every aspect of it; attached as *Exhibit A* is a copy of the Department of Health Care Services letter indicating the outstanding lien owed to the Department appears to be **$64,377.29**; on 10/26/2011, Kyle Yang's lien amount was reduced to **$13,250.00**; a copy of the lien reduction letter from the Department of Health Care Services is attached as *Exhibit B*.

NEEDS/PROBLEMS/COMMENTS, continued:

1. **Article One, Section 5 of the SNT states: "There are remainder beneficiaries after the Beneficiary's death; the Beneficiary is not the sole beneficiary of this trust under California law and therefore may not revoke this Trust as sole beneficiary." Pursuant to CA Rule of Court 7.902, *Petition* does not state the current address of the beneficiary, Kyle Yang, and the names and addresses of contingent beneficiaries that may be entitled to notice.**

2. **The following sections of the proposed SNT contain terms which the Court may determine require revision, as follows [*proposed revisions to trust terms are italicized*]:**

   a. **Article One Section 3: In this section, the title of the SNT should for consistency be stated as the *KYLE YANG IRREVOCABLE SPECIAL NEEDS TRUST*, as well as throughout the SNT document and the final order.**

   b. **Article Three Section 1: Distribution standard should include language distinguishing "distributions" from "disbursements" such that <u>disbursements</u> are payments made, including on-going payments, for special needs services for the beneficiary, while <u>distributions</u> are purchases made to meet the beneficiary's special needs and the items purchased become trust property included on the SNT's schedule of property on hand for trust accounting purposes. Court may require the following language be included in Article Three Section 1: *"The Trustee shall hold, administer, disburse and distribute all property allocated to this Trust and all income for the sole benefit of Kyle during Kyle's lifetime. Disbursements from the Trust for special needs, as distinct from distributions from the Trust for special needs, may be made in the Trustee's sole, absolute and good faith discretion without Court approval. Distributions from the Trust for special needs shall be made by the Trustee only upon Court approval. The Trustee shall not make any disbursements or distributions that the Trustee in good faith determines is not for the special needs of the Beneficiary. Distributions for purchases of real property and tangible personal property shall be included on a Schedule of Trust Property on Hand at the time of the Trust accounting. Any income not distributed shall be accumulated and added to principal."***

~Please see additional page~

NEEDS/PROBLEMS/COMMENTS, continued:

Proposed revisions to SNT terms, continued:

c. **Article Three Section 4, Item(g): SNT states an example of a disbursement for Kyle is "Private insurance coverage for Kyle, including but not limited to premiums, attributable to health, life, disability, accident insurance, as well as co-payments and deductible amounts with respect to any insurance covering Kyle." Court may require this item be removed from the SNT terms and decline to allow such trust disbursements because private insurance coverage typically does not constitute a "special need" that is a permissible disbursement from a special needs trust, given that this may constitute payment for a service already paid for by another source such as Medi-Cal or other public health benefits.**

d. **Article Three Section 4, Items(k), (l) and (q): SNT terms regarding purchase of a residence, structural or nonstructural changes to a residence, and purchase of automobiles should include the language "*upon court approval*" in the terms. Additionally, Item (r) should include the language *"upon court approval of the accounting"* with respect to payment for professional services rendered.**

e. **Article Six Section 2(B) <u>and</u> Section 3: Court may require the following revision at the outset of these sections: "*On the death of the Beneficiary, upon court order approving the final accounting,….*"**

f. **Article Seven Section 5: This section regarding "Authority to Purchase Residence" should include specific language regarding the residence as an asset of the SNT "*with title vested in the name of the Trust*." Additionally, the language "*Upon court approval*" should precede the term stating the Trustee may also use Trust funds for improvement of a residence which is not titled in the name of the Trust. The following language is proposed to be included in the SNT terms at the end of this section: *"Distributions for the purchase of any real property or tangible personal property shall be accounted for and included on a Schedule of Trust Property on Hand at the time of the trust accounting. Any purchase or sale of any real property of the Trust may be made only if authorized by the Court pursuant to the rules applicable to Conservatorships and Guardianships."***

g. ***Schedule A, Description of Property Transferred to the Trust*, is attached as the last page (page 37) of the SNT. Court may require this *Schedule A* to be included immediately preceding the signature of the Court to more clearly denote the approval and establishment of the SNT which includes the property described on *Schedule A*. (Note: The specific information regarding bank name, account and initial deposit that is to be contained on *Schedule A* should be included in the final proposed order submitted for the Court's approval and signature.)**

3. **Need proposed order containing the requested findings and the final draft of the proposed SNT. (Note: *Exhibit B* containing copy of proposed SNT contains blank lines for insertion of the <u>date</u> of SNT creation and the <u>dollar amount</u> to fund the SNT, which will require completion in the final proposed order submitted for approval and signature. Additionally, proposed SNT attached as *Exhibit B* is entitled KYLE YANG <u>IRREVOCABLE</u> SPECIAL NEEDS TRUST, which title should be stated in the same manner in the final proposed order submitted for approval and signature. Further, final proposed order should include the amount of the Department of Health Care Services <u>lien amount</u> to be paid prior to funding the SNT pursuant to Probate Code § 3604(d).)**

11 Judith Petrutis (CONS/P) **Case No. 11CEPR01054**

Atty Sanoian, Joanne (for Adrianne M. Petrutis Brewer – Daughter – Petitioner)

Atty Istanboulian, Flora (Court-appointed for Proposed Conservatee)

Petition for Appointment of Probate Conservator of the Person (Prob. C. 1820, 1821, 2680-2682)

Age: 69		
DOB: 11-3-42		
	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	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
✓	Citation	
	FTB Notice	

NO TEMPORARY – none requested

ADRIANNE M. PETRUTIS BREWER, daughter, is Petitioner and requests appointment as Conservator of the Person with medical consent and dementia medication and placement powers.

Voting rights affected.

Capacity Declaration filed 12-13-11.

Petitioner states the proposed conservatee has been diagnosed with dementia and needs supervision and help with all activities of daily living.

Petitioner states conservatorship of the estate is not required at this time. The proposed conservatee and her spouse have a family trust in which he has management and control of trust assets. The proposed conservatee signed a durable power of attorney in 2007 that nominates Petitioner as agent and as conservator (attached).

Court Investigator Jennifer Daniel filed a report on 12-28-11.

NEEDS/PROBLEMS/COMMENTS:

Court Investigator advised rights on 12-8-11.

Voting rights affected – need minute order

Reviewed by: skc

Reviewed on: 12-21-11

Updates: 12-30-11

Recommendation:

File 11 - Petrutis

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

12 Lucille McCaslin (CONS/PE) **Case No. 03CEPR01182**

Atty LeVan, Nancy J. (for Pat Miranda, Conservator)

Probate Status Hearing Re: Termination of Proceeding for Deceased Conservatee (Prob. C. § 1860, et seq.)

DOD: 5-5-09			**PAT MIRANDA**, daughter, was appointed Temporary Conservator of the Person and Estate with bond of $30,000.00 on 8-22-03. Bond was filed and Temporary Letters issued on 8-22-03.
Cont. from 083011, 101911			
	Aff.Sub.Wit.		Pat Miranda was later appointed general Conservator of the Person and Estate with bond of $30,000.00 and Letters issued on 9-30-03.
	Verified		
	Inventory		
	PTC		
	Not.Cred.		**On 7-15-11,** the court set this status hearing for termination of conservatorship for deceased conservatee.
	Notice of Hrg		
	Aff.Mail		
	Aff.Pub.		
	Sp.Ntc.		**Status Reports filed by Attorney LeVan states an account is in process.**
	Pers.Serv.		
	Conf. Screen		
	Letters		The report states the Conservator has had "problems with her husband rifling through all of her paperwork and forging checks to acquire funds from the Conservator's personal accounts. All of this has been occurring since the death of the Conservatee."
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
	9202		
	Order		
	Aff. Posting		Attorney and Conservator understand the conservatorship has gone on long after the Conservatee's death, but due to serious complications with the Conservator's life, getting the items needed for the accounting was put on the "back burner." Right now, Conservator is unemployed and focusing on saving her house from foreclosure.
✔	**Status Rpt**	X	
	UCCJEA		
	Citation		
	FTB Notice		Attorney LeVan requested a 45 day continuance and then a 60-day continuance to file the account and petition for termination.
			As of 12-19-11, nothing further has been filed.

NEEDS/PROBLEMS/COMMENTS:

<u>Note</u>: On 8-30-11, Attorney LeVan requested a 45-day continuance to file the accounting and petition for termination. On 10-19-11, Attorney LeVan requested a 60-day continuance due to medical issues and assured the Court that this will be the last continuance requested.

<u>As of 12-19-11, nothing further has been filed</u>.

1. **Need final account/petition for termination.**

Updates:

Contacts: Reviewed 12-19-11

Recommendation:

Reviewed by: skc

File 12 - McCaslin

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

13 Steven Scarbrough (GUARD/P) **Case No. 01CEPR00676**

Atty Cabral, Frank H. (Pro Per – Co-Guardian – Petitioner)

Atty Cabral, Rochelle E. (Pro Per – Co-Guardian – Petitioner)

Petition for Termination of Guardianship

Age: 14		
DOB: 11-19-97		
	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**	
	Clearances	
✔	**Order**	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

FRANK H. CABRAL and **ROCHELLE E. CABRAL**, Brother and Sister-in-law and current Guardians appointed 1-29-09, are Petitioners.

Note: Kenneth and Michelle Cabral, uncle and aunt, served as Guardians from 10-11-01 through 1-29-09.

Father: Gary Cabral *(Deceased)*
Mother: Kimberly Ann Alberg

Paternal Grandfather: Rudy Cabral
Paternal Grandmother: Rosemary Cabral *(Deceased)*

Maternal Grandfather: Allen Scarbrough
Maternal Grandmother: Peggy Scarbrough *(Deceased)*

Additional siblings: Gary Cabral, Lisa Petz, Joe Cabral

Petitioners request termination of the guardianship due to uncontrollable actions such as run-away, lighting fires at school, waving a lit lighter near their infant and mother-in-law, disobey teachers at school, stealing, drug abuse, demonstrations of sexual act.

Court Investigator Jo Ann Morris filed a report on 12-21-11.

NEEDS/PROBLEMS/COMMENTS:

Note: This minor is currently under the jurisdiction of the Juvenile Delinquency Court.

1. **Need Notice of Hearing (GC-020)**
2. **Need proof of service of Notice of Hearing on all relatives at least 15 days prior to the hearing per Probate Code §§ 1460(b)(5), 1510 or consent and waiver of notice or declaration of due diligence on:**
   - **Steven Scarbrough (minor, age 14)**
   - **Person or agency having legal custody of minor *(Note: Minor is currently a ward of the Juvenile Court.)***
   - **Kimberly Ann Alberg (Mother)**
   - **Rudy Cabral (Paternal Grandfather)**
   - **Allen Scarbrough (Maternal Grandfather)**
   - **Gary Cabral (sibling)**
   - **Lisa Petz (sibling)**
   - **Joe Cabral (sibling)**

Reviewed by: skc
Reviewed on: 12-21-11
Updates: 12-22-11
Recommendation:
File 13 - Scarbrough

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

14 Gage Vargas, Justin Vargas & Anthony Castillo (GUARD/P)

Case No. 08CEPR00728

Atty **Hernandez, De Ann (pro per Guardian/paternal aunt)**

Atty **Castillo, Crystal (pro per Petitioner/mother)**

Petition for Termination of Guardian

Gage age: 4 years DOB: 8/12/2007		
Anthony age: 5 years DOB: 9/22/2006		
Justin age: 6 years DOB: 12/1/2005		
Cont. from		
	Aff.Sub.Wit.	
✓	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	
	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	

CRYSTAL CASTILLO, mother, is petitioner.

DEANNA HERNANDEZ, paternal aunt, was appointed guardian on 11/20/2008.

Father: **FABIAN VARGAS** – *declaration of due diligence filed on 12/5/11*.

Paternal grandfather: Juan Carlos Vargas – *declaration of due diligence filed on 12/5/11*.
Paternal grandmother: Stella Sanchez
Maternal grandfather: John Castillo – *declaration of due diligence filed on 12/5/11*.
Maternal grandmother: Cecilia Rader – *declaration of due diligence filed on 12/5/11*.

Petitioner states she is fully able to raise and provide for her children. She is currently in a stable relationship and has been for over a year. She also has a stable home for a year. She has helped her significant other raise his two daughters. She is no longer abusing substances in any way shape or form. Petitioner feels it is in the best interest of her children to return to her care.

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

NEEDS/PROBLEMS/COMMENTS:

1. **Need *Notice of Hearing*. (Note: a proof of service of the *Notice of Hearing* has been filed but he *Notice of Hearing* has not. Also, the proof of service does not say which documents were served.)**

2. **Need proof of service of the Notice of Hearing on:**
   a. **Stella Sanchez (paternal grandmother)**
   b. **Juan Vargas (paternal grandfather)** *if court does not dispense with notice.*
   c. **John Castillo (maternal grandfather)** *if court does not dispense with notice.*
   d. **Cecilia Rader (maternal grandmother)** *if court does not dispense with notice.*

<u>Note:</u> Minute order dated 4/29/10 granted supervised visits to the mother every Saturday from 10 a.m. to 12 p.m. supervised by DeAnn Hernandez.

Reviewed by: KT
Reviewed on: 12/21/11
Updates:
Recommendation:
File 14 – Vargas & Castillo

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

15 Jeremiah Colasanti (GUARD/P) **Case No. 11CEPR00713**

Atty Bryant, Heidi (Pro Per – Step-Mother – Guardian)

Atty Boyer, Patricia Anne – Maternal Grandmother)

Petition for Modification of Visitation

Age: 6		
DOB: 6-12-05		
	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	

HEIDI BRYANT, Guardian, is Petitioner.

Father: Joshua Colasanti
Mother: Jenna Colasanti
Paternal Grandfather: Unknown
Paternal Grandmother: Charlene Masseria
Maternal Grandfather: Deceased
Maternal Grandmother: Patricia Boyer
Siblings: Jaiden Colasanti (2), Desiree Colasanti (10)

Petitioner states Maternal Grandmother Patricia Boyer has a history of abusing her medication and has called for Jeremiah heavily under the influence of her medication. When they spoke, it was difficult to understand what she was saying. She allowed Jeremiah to speak to her, and when he got off the phone, he said his grandmother doesn't sound good. In addition, Patricia Boyer has mentioned bringing Jeremiah out of Fresno County for their visits. Petitioner is concerned for Jeremiah's safety being alone and traveling with Patricia Boyer being heavily under the influence.

Petitioner requests to be allowed to supervise the visits because Jeremiah's safety is greatly at risk and she is very worried and scared for him.

On 12-8-11, based on this petition filed ex parte, the Court set the matter for noticed hearing and modified Patricia Boyer's visitation to supervised pending further order of the Court. A copy of the order setting the matter for hearing and requiring notice to Patricia Boyer was mailed to Petitioner on 12-8-11.

NEEDS/PROBLEMS/COMMENTS:

Note: On 11-28-11, the Court ordered unsupervised visits for Maternal Grandmother Patricia Boyer Saturdays 9 am-6 pm. Based on this ex parte petition, visits were revised to supervised and the matter was set for hearing.

Note: There is also a current visitation order allowing supervised visits with the parents as long as they are clean and sober (8-25-11).

Note: Patricia Boyer lives in Merced.

1. **Need Notice of Hearing.**
2. **Need proof of service of Notice of Hearing at least 15 days prior to the hearing on Patricia Boyer.**
3. **The Court may also require notice to parents.**

Reviewed by: skc

Reviewed on: 12-21-11

Updates:

Recommendation:

File 15 - Colasanti

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

16A Nicholas Balero, Alyssa Duarte, Lucas Duarte, Starr Duarte and Dominick Duarte (GUARD/P) Case No. 11CEPR00774

Atty Perez, Rosie (pro per Petitioner/paternal grandmother)

Petition for Appointment of Guardian of the Person (Petitioner Rosie Perez)

Nicholas age: 10 years DOB: 1/30/01		
Alyssa age: 9 years DOB: 2/12/02		
Lucas age: 8 years DOB: 12/27/02		
Starr age: 6 years DOB: 7/6/05		
Dominick age: 3 years DOB: 5/28/08		
Cont. from 110111		
	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	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
✓	UCCJEA	
	Citation	
	FTB Notice	

THERE IS NO TEMPORARY.
No temporary was requested.

ROSIE PEREZ, paternal grandmother, is petitioner.

Nicholas's father: **UNKNOWN**

Father of remaining minors: **LUCAS PEREZ DUARTE** – *consents and waives notice.*

Mother: **VANESSA BALERO** – *personally served on 9/6/11.*

Nicholas' paternal grandparents: Unknown

Paternal grandfather of remaining minors: Lucas Duarte – *consents and waives notice.*
Maternal grandfather: Manuel Balero – *served by mail on 9/8/11.*
Maternal grandmother: Julie Salinas – *served by mail on 9/8/11.*

Petitioner states the children have lived with her on and off since 2009. Petitioner states she provides a stable home and supports them. The children were living with her since 2/2011. The mother came and picked up the children 8/2011. The children are now living with different relatives.

Court Investigator Charlotte Bien's Report filed on 10/21/11

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

NEEDS/PROBLEMS/COMMENTS:

<u>Note:</u> Please see competing Petition filed by maternal grandmother Julie Salinas on page 16B

<u>Note:</u> Petition states the identity of Nicholas' father and paternal grandparents is unknown. Declarations of Due Diligence were filed on 9/6/11.

Reviewed by: KT
Reviewed on: 12/20/11
Updates:
Recommendation:
File 16A – Duarte & Balero

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

16B Nicholas Balero, Alyssa Duarte, Lucas Duarte, Starr Duarte and Dominick Duarte (GUARD/P)

Case No. 11CEPR00774

Atty Salinas, Julie

Petition for Appointment of Guardian of the Person (Petitioner Julie Salinas)

Nicholas age: 10 years DOB: 1/30/01		
Alyssa age: 9 years DOB: 2/12/02		
Lucas age: 8 years DOB: 12/27/02		
Starr age: 6 years DOB: 7/6/05		
Dominick age: 3 years DOB: 5/28/08		
Cont. from 110111		
	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	X
	Duties/Supp	
	Objections	
	Video Receipt	
✓	CI Report	
	9202	
	Order	X
	Aff. Posting	
	Status Rpt	
✓	UCCJEA	
	Citation	
	FTB Notice	

THERE IS NO TEMPORARY.
No temporary was requested.

JULIE SALINAS, maternal grandmother, is petitioner.

Nicholas's father: **UNKNOWN**

Father of remaining minors: **LUCAS PEREZ DUARTE**

Mother: **VANESSA BALERO**

Nicholas' paternal grandparents: Unknown

Paternal grandfather of remaining minors: Lucas Duarte
Paternal grandmother of remaining minors: Rosie Perez
Maternal grandfather: Manuel Balero

Petitioner states her grandchildren have been through a lot and they need someone to be there full time and to give them some kind of stability.

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

NEEDS/PROBLEMS/COMMENTS:

<u>Note:</u> Please see competing Petition filed by paternal grandmother, Rosie Perez on page 16A.

1. **Need Notice of Hearing.**
2. **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. **Vanessa Balero (mother)**
   b. **Lucas Duarte (father)**
   c. **Unknown (father of Nicholas)**
3. **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. **Nicholas' unknown paternal grandparents**
   b. **Lucas Duarte (paternal grandfather)**
   c. **Rosie Perez (paternal grandmother)**
   d. **Manuel Balero (maternal grandfather)**
4. **Need Duties of Guardian**
5. **Need Order**
6. **Need Letters**

Reviewed by: KT
Reviewed on: 12/20/11
Updates:
Recommendation:
File 16A – Duarte & Balero

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

17 Isaac Ybarra & Alex Colmenero (GUARD/P) Case No. 11CEPR00971

Atty Guerrero, Sally (Pro Per – Maternal Grandmother – Petitioner)

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

Isaac Tony Ybarra (16) DOB: 3-24-95		
Alex Colmenero (15) DOB: 11-12-96		
	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	

NO TEMPORARY – none requested

SALLY GUERRERO, Maternal Grandmother, is Petitioner.

Father (Isaac): ALFONSO YBARRA
Paternal Grandfather (Isaac): Not listed
Paternal Grandmother (Isaac): Not listed

Father (Alex): ROBERT COLMENERO
Paternal Grandfather (Alex): Not listed
Paternal Grandmother (Alex): Not listed

Mother: Gina Christina Guerrero
Maternal Grandfather: Not listed

Siblings: Leticia Guerrero, Eddie Guerrero, Gary Guerrero

Petitioner states guardianship is necessary to be there for them when Mother or Father are not able to, and for their well-being. Petitioner states she has been like a mother to them, and they call her Mom too.

Per the UCCJEA, Isaac has lived with Petitioner for 13 years and Alex has lived with her for four months.

Court Investigator Jennifer Young filed a report on 12-28-11. The Court Investigator recommends the Petition be <u>GRANTED AS TO ALEX COLMENERO ONLY</u> due to Isaac being a ward of the Juvenile Dependency Court.

NEEDS/PROBLEMS/COMMENTS:

<u>Note: This Probate Court has no jurisdiction to make orders regarding minor Isaac Tony Ybarra as he is a ward of the Juvenile Court.</u>

<u>If this matter goes forward for minor Alex, the following issues exist</u>:

1. **UCCJEA (GC-120) is incomplete. Need Alex' residence history for the past five years, and need information regarding whether there are any other custody cases (#4-#6).**
2. **Petitioner lists her own address as mother's address. The Court may require clarification. Does the mother live with Petitioner also?**
3. **Need Notice of Hearing.**
4. **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 <u>or</u> declaration of due diligence on:**
   - Alex Colmenero (minor, age 15)
   - Gina Christina Guerrero (Mother)
   - Robert Colmenero (Alex' father)

<u>SEE PAGE 2</u>

Reviewed by: skc

Reviewed on: 12-21-11

Updates: 12-28-11

Recommendation:

File 17 – Ybarra & Colmenero

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

NEEDS/PROBLEMS/COMMENTS (Continued):

5. **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 <u>or</u> declaration of due diligence on:**
   - Alex' paternal grandfather
   - Alex' paternal grandmother
   - Liticia Guerrero (sibling)
   - Eddie Guerrero (sibling)
   - Gary Guerrero (sibling)
   - Isaac Tony Ybarra (sibling)

   (Note: Siblings ages 12 and older should be served. If siblings are minors, a copy should also be sent to the parent or guardian with whom they reside.)

6. **Per the Court Investigator's report, Petitioner stated there is Navajo American Indian ancestry in her family, but she does not have proof.**

   Therefore, a Notice of Child Custody Proceeding for Indian Child (Form ICWA-030), must be served prior to the general hearing, together with copies of petition and all attachments, including this form, on the child's parent; any Indian custodian; any Indian tribe that may have a connection to the child; the Bureau of Indian Affairs (BIA), and possibly the U.S. Secretary of the Interior, by certified or registered U.S. Mail, return receipt requested. (Please see Probate Code 1460.2, and CA Rules of Court 7.1015).

   A blank copy of the Notice of Child Custody Proceeding for Indian Child (Form ICWA-030) is in the file to hand to petitioner at the hearing. Petitioner should complete the form and return it to the probate clerk for mailing.

7. **Per #6 above, Petitioners will need to return the completed Notice of Child Custody Proceeding for Indian Child form to the probate clerks' office. The probate clerk will then mail the notice to the required agencies as required.**

8. **After mailing, per item 2 above, need proof of service of notice, including copies of the notices sent and all return receipts and responses received, pursuant to Probate Code 1460.2(d).**

18 Sam Johnson and Jessie Johnson (Det Succ) Case No. 11CEPR01002

Atty Johnson, Robert L. (pro per Petitioner/son)

Atty Johnson, Susie (pro per Petitioner/daughter-in-law)

Petition to Determine Succession to Real Property (Prob. C. 13151)

Sam DOD: 10/3/1994		
Jessie DOD: 8/29/1993		
Cont. from		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	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	

ROBERT JOHNSON, son, and **SUSIE JOHNSON**, daughter-in-law, are petitioners.

40 days since DOD.

No other proceedings

I & A – NEED

NEEDS/PROBLEMS/COMMENTS:

1. **Petition includes two decedents. A separate petition is needed for each decedent. Therefore need this petition to be amended to include only one of the decedents and another petition to be filed for the remaining decedent.**
2. **Petition was filed using a fee waiver. Please note: prior to any order granting distribution of the property all costs of administration, including filing fees, must be paid.**
3. **Petition is defective in the following areas, including but not limited to:**
   a. **Need inventory and appraisal**
   b. **There is no attachment 11 including the legal description and decedent's interest in the property.**
   c. **#9a(3) of the petition was not answered re: issue of predeceased child.**
   d. **The petition indicates the decedents died intestate. The petition also indicates that both petitioners succeed to the property. Pursuant to intestate succession only Robert succeeds to the property therefore only Robert should petition.**

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

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

19 Robert ("Bob") J. Johansen (CONS/PE) Case No. 11CEPR01121

Atty Amador, Catherine A. (for Joyce F. Biglione and Sharon Shields – Petitioners)

Petition for Appointment of Temporary Conservator of the Person (Prob. C. 2250)

Robert J. Johansen
DOB: Not provided

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

TEMPORARY GRANTED EX PARTE 12-27-11 authorized Petitioners as Co-Conservators to restrict the Conservatee's driving privileges.

SHARON SHIELDS, Bob's daughter, and **JOYCE F. BIGLIONE**, Faye's daughter and Bob's step-daughter, are Petitioners. (A petition regarding Bob's wife Faye was concurrently filed.)

Petitioners request appointment as Temporary Co-Conservators of the Person with medical consent and dementia medication and placement powers.

Petitioners also request authority to change the Conservatee's residence during temporary conservatorship to Sierra Villa Assisted Living in Clovis.

A Capacity Declaration was filed 12-23-11.

Petitioners state Mr. Johansen suffers from dementia and loss of short term memory, weakness, poor coordination and slow reaction times due to medication. He cannot manage the activities of daily life without assistance. His physician states he should be placed in a secured-perimeter adult residential facility and treated with dementia medications. APS recommends conservatorship for the same reasons.

Additional details of the events leading to this petition are provided with reference to the separate ex parte application re notice. See below.

Concurrently with the Temporary Petition, Petitioners also filed an Ex Parte Application for Good Cause Exception to Notice of Hearing on Petition for Appointment of Temporary Conservator of the Person.

Petitioners requested to dispense with notice of the temporary hearing to both Mr. and Mrs. Johansen because of the potential harm due to dementia, and because Mr. Johansen continues to drive and frequently becomes lost and disoriented shortly after leaving home. The doctor recommended their placement in a secured-perimeter residential care facility and Petitioners state Mr. Johansen is not competent to consent to such needs/treatment.

SEE PAGE 2

NEEDS/PROBLEMS/COMMENTS:

Note: Page 20 is a petition for temporary conservatorship of this conservatee's wife (same petitioners).

Note: The temporary petitions request temp. conservatorship of the person only with additional medication and placement powers.

The general petitions set for hearing 2-7-12 also request conservatorship of the estate, and designate another sister, LINDA BABCOCK, as the proposed conservator of the estate.

Note: Court Investigator to provide report.

SEE PAGES 2-3

Reviewed by: skc
Reviewed on: 12-28-11
Updates:
Recommendation:
File 19 - Johansen

SUMMARY (Continued):

Petitioner Sharon Shields' declaration describes the events leading to this petition as follows:

On 9-29-11, Bob's wife Faye was hospitalized for high blood pressure and low oxygen levels, and was later discharged to Golden Living Center in Clovis, and later to an independent living apartment at the Windham in Fresno.

Bob joined her at the Windham, but the couple had difficulty adjusting. Faye became increasingly aggressive and hostile, and Bob increasingly unable to manage his own personal daily activities, including housekeeping and personal hygiene. Sharon Shields states she received almost daily calls regarding what turned out to be "imaginary crises" such as that there was no toilet paper, when there was a large package of toilet paper in the cabinet.

The couple left the Windham in their vehicle and became lost three separate times one day, requiring police assistance. The Windham took the position that they could not continue living there if they were going to continue driving. Petitioners tried to disable their car by letting the air out of the tires, but they managed to get it repaired and Bob continued to drive, despite requests that he stop. The couple then moved back to their home on their own.

Sharon Shields states she has been the person most responsible for helping with their daily needs and visits as often as she can, but while Bob remains willing to talk to her and her step-sisters, Faye has become increasingly hostile, making it difficult to check on the condition of the home, clean, etc.

The declaration states Bob's physical and mental condition has deteriorated seriously over the last few months although he has not had any serious illnesses, and Sharon Shields has noticed numerous examples of weakness and lack of coordination, slurred speech, etc., which may be signs of "mini-strokes." He regularly fails to take his medication and attend to his own personal hygiene needs. He also expresses frustration over his inability to care for Faye. The family is concerned that they are unsafe in their home for many reasons and are not receiving adequate care, and all are in agreement with this petition.

Petitioners state their sister Linda Babcock has been managing their parents' finances and will continue to do so informally during temporary conservatorship of the person only, but will request that she be appointed conservator of their respective estates at the general stage.

Attorney Catherine Amador's declaration provides information regarding APS involvement and visits to the home.

Examiner notes that the Court declined to make an order dispensing with notice to the proposed conservatees or modifying notice requirements to the family members for the temporary hearing.

Court Investigator Jennifer Daniel to provide report.

Counsel to be appointed for the proposed conservatee.

SEE PAGE 3

19 Robert ("Bob") J. Johansen (CONS/PE) Case No. 11CEPR01121

Atty Amador, Catherine A. (for Joyce F. Biglione and Sharon Shields – Petitioners)

Petition for Appointment of Temporary Conservator of the Person (Prob. C. 2250)

NEEDS/PROBLEMS/COMMENTS:

1. **Need Confidential Conservator Screening Form for both Petitioners.**

2. **Need Confidential Supplemental Information form.**

3. **Need Duties of Conservator and Acknowledgment of Receipt of Handbook for Conservators form signed by both Petitioners.**

4. **Need Notice of Hearing.**

5. **Need proof of personal service of Notice of Hearing with a copy of the temporary petition at least five court days prior to the hearing per Probate Code §2250(e) on:**
   - Robert J. Johansen

6. **Need proof of service of Notice of Hearing with a copy of the temporary petition at least five court days prior to the hearing per Probate Code §2250(e) or declaration of due diligence on:**
   - Faye M. Johansen (wife)
   - Sarah Norris (granddaughter)
   - Nina Bennie (sister)
   - Sandy Caudle (daughter)
   - Susanna Caudle (granddaughter)
   - Jennifer Jones (granddaughter)
   - Corinne Chitwood (granddaughter)

   <u>Note</u>: Petitioner requests the Court excuse notice to Nina Bennie (sister) and Sandy Caudle (daughter) as the family has lost touch with these relatives and do not know how to reach them.

   <u>Note</u>: Attorney Amador provided spoke with most relatives by phone and confirmed their agreement.

7. **Because the order was modified and granted on an ex parte basis, there is no order in the file for signature. If temporary conservatorship is extended with the additional powers requested, a new order and new letters will be necessary.**

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

Faye M. Johansen
DOB: Not provided

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

TEMPORARY GRANTED EX PARTE 12-27-11 authorized Petitioners as Co-Conservators to restrict the Conservatee's driving privileges.

JOYCE F. BIGLIONE, Faye's daughter, and **SHARON SHIELDS**, Bob's daughter and Faye's step-daughter, are Petitioners. (A petition regarding Faye's husband was concurrently filed.)

Petitioners request appointment as Temporary Co-Conservators of the Person with medical consent and dementia medication and placement powers.

Petitioners also request authority to change the Conservatee's residence during temporary conservatorship to Sierra Villa Assisted Living in Clovis.

A Capacity Declaration was filed 12-23-11.

Petitioners state Mrs. Johansen suffers from dementia and cannot manage her daily activities without assistance, but that she has become hostile to nearly all family members and refuses assistance. Her physician states she should be placed in a secured-perimeter adult residential facility and be treated with dementia medications.

Additional details of the events leading to this petition are described in the separate ex parte application re notice (see below), and are summarized in the related Examiner Notes (see Page 19).

Concurrently with the Temporary Petition, Petitioners also filed an Ex Parte Application for Good Cause Exception to Notice of Hearing on Petition for Appointment of Temporary Conservator of the Person.

Petitioners requested to dispense with notice of the temporary hearing to both Mr. and Mrs. Johansen because of the potential harm due to dementia, and because Mrs. Johansen has fallen attempting to visit her sister across the street, does not recognize her own failing health or dementia, and insists on having her husband drive around town on unnecessary errands, despite his own failing health and inability to drive safely.

SEE PAGE 2

NEEDS/PROBLEMS/COMMENTS:

Note: Page 19 is a petition for temporary conservatorship of this conservatee's husband (same petitioners).

Note: The temporary petitions request temp. conservatorship of the person only with additional medication and placement powers.

The general petitions set for hearing 2-7-12 also request conservatorship of the estate, and designate another sister, LINDA BABCOCK, as the proposed conservator of the estate.

Note: Court Investigator to provide report.

SEE PAGES 2-3

Reviewed by: skc
Reviewed on: 12-28-11
Updates:
Recommendation:
File 20 – Johansen

SUMMARY (Continued):

In addition to the details described in the related summary (Page 19), a declaration of Joyce Biglione describes incidents where Faye became violent at Thanksgiving dinner and later attempted to walk to visit her sister across the street. She fell in the street, and a passing motorist found her and took her to her sister, who was not expecting her. Bob was asleep and unaware she had left the house. On another occasion, Faye again walked across the street to her sister's, this time successfully, but then accused her sister of taking her checkbook, when she had long since given the checkbook to her daughter Linda to pay bills.

The declaration states that the family cleaned and stocked the house when they insisted on returning home, the condition of the house deteriorated quickly, garbage stacked up and the stench of urine is noticeable, but Faye appears unaware and continues to become more and more aggressive and agitated when she sees her daughters Joyce and Linda. Sharon has taken over regular visiting because Bob will more willingly talk to her.

Faye has accused the daughters of stealing from them, and has made calls to her grandson, who is her financial planner and threatened staff members regarding paying her property taxes, which were paid. The declaration cites another instance where Faye answered the door without appropriate clothing.

Petitioners state their sister Linda Babcock has been managing their parents' finances and will continue to do so informally during temporary conservatorship of the person only, but will request that she be appointed conservator of their respective estates at the general stage.

Examiner notes that the Court declined to make an order dispensing with notice to the proposed conservatees or modifying notice requirements to the family members for the temporary hearing.

Court Investigator Jo Ann Morris to provide report.

Counsel to be appointed for the proposed conservatee.

SEE PAGE 3

SUMMARY (Continued):

NEEDS/PROBLEMS/COMMENTS:

8. **Need Confidential Conservator Screening Form for both Petitioners.**

9. **Need Confidential Supplemental Information form.**

10. **Need Duties of Conservator and Acknowledgment of Receipt of Handbook for Conservators form signed by both Petitioners.**

11. **Need Notice of Hearing.**

12. **Need proof of personal service of Notice of Hearing with a copy of the temporary petition at least five court days prior to the hearing per Probate Code §2250(e) on:**
    - Faye M. Johansen

13. **Need proof of service of Notice of Hearing with a copy of the temporary petition at least five court days prior to the hearing per Probate Code §2250(e) or declaration of due diligence on:**
    - Robert J. Johansen (husband)
    - Linda Babcock (daughter)
    - Marge Tinkler (sister)
    - Mozelle Cate (sister)
    - Betty Mason (sister)
    - Terri Sharpton (granddaughter)
    - Randall Biglione (grandson)
    - Christian Babcock (grandson)
    - Brandi Babcock (granddaughter)

    <u>Note</u>: Petitioner requests the Court excuse notice to Betty Mason (sister) as the family is unaware of her location at this time.

    <u>Note</u>: Attorney Amador provided spoke with most relatives by phone and confirmed their agreement.

14. **Because the order was modified and granted on an ex parte basis, there is no order in the file for signature. If temporary conservatorship is extended with the additional powers requested, a new order and new letters will be necessary.**

1 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)

Notice of Motion and Motion for Judgment on the Pleadings

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	

BRUCE BICKEL, successor Trustee of the Esther Cenci Survivor's Trust, is Petitioner.

Petitioner requests the Court enter judgment on the pleadings in his favor and against Richard G. Cenci (original petitioner and objector herein (referred to hereafter as "Objector")), and enter a judgment of dismissal for Petitioner Bickel --- on the ground that Objector has failed to set forth any allegations against Petitioner Bickel in his 1st Amended Petition (hereinafter "Petition"), filed 5/23/10, against Petitioner Bickel.

Petitioner states:

- **Objector's Petition asserts no claims Petitioner Bickel; even if Objector were to prevail at trial on the Petition, Objector would recover nothing from Petitioner Bickel since no claims are made against him**
  - The Petition summarily alleges that Terese Cenci McGee, Herman F. Cenci, and Esther Cenci caused the misappropriation and depletion of assets of a bypass trust created under the Herman and Esther Cenci Family Trust ("Family Trust").
    - Objector's Petition ultimately seeks a return of lost monies to the bypass trust and requests, in part, that the court order a transfer of assets from the survivor's trust (also created by the Family Trust) to the bypass trust for losses sustained; however, it remains undisputed that the only assets in the survivor's trust are a residence on Bullard Ave., Fresno, and a Packard automobile; it is further undisputed that these assets are in fact properly titled in the survivor's trust;
    - Further, there are no claims asserted in the Petition that would allow for the direct title transfer of the two assets to the survivor's trust. In fact, at the 11/14/11 hearing on the *lis pendens* action relating to the Bullard real property, this court determined that the Petition asserted "no real property claim" within the meaning of statutes that would justify a *lis pendens;*
    - Objector's claims are essentially for a money judgment to redress the alleged losses to the bypass trust purportedly caused by the bad acts Therese, Herman and Esther Cenci (note that per this Court's docket, on 12/8/11 a Request for Dismissal was entered as to Esther, and therefore the only claims are against Terese and Herman and not against Petitioner Bickel – and in fact, no wrongful acts related to the survivor's trust assets are asserted in the Petition against Petitioner Bickel);

SEE ATTACHED PAGE

NEEDS/PROBLEMS/ COMMENTS:

Note: Trial on Objector's 1st Amended Petition is currently scheduled for 1/10/12.

1. Need Order.

Reviewed by: NRN
Reviewed on: 12/27/11
Updates:
Recommendation:
File 1 - Cenci

Dept. 303, 9:00 a.m. Thursday, January 5, 2012

Cont'd:

- Objector will argue still that he seeks the assets transfer to redress the losses for the bad acts; however, even if Objector were to prevail on his claims against Terese and Herman, any right to collect against them would be limited only to the interest of these individuals in the survivor's trust, rather than a turnover of all assets titled in the Trust;
- As such, Petitioner Bickel's instant Motion for Judgment on the Pleadings should be granted, and the Court should enter a judgment of dismissal of Petitioner Bickel.

- **Legal Standards for Ruling on Motions for Judgment on the Pleadings**
  - A motion for judgment on the pleadings may be made by any party for by the court *sua sponte* (Weil & Brown, Civ. Proc. Before Trial (Rutter Group 2009) 7.278, 7(I)-75A), and operates in much the same way as a general demurrer, although it can be made after the time for filing a demurrer has expired. Except as provided by statute, the rules governing general demurrers apply. (See *Cloud v. Northrop Grumman Corp*. (1998) 67 Cal. App. 4th 995,999).
  - CCP §438 governs these motions, but California courts have recognized the survival of a common law, non-statutory motion for judgment on the pleadings. (See *Smiley v. Citibank, N.A.* (1995) 11 Cal. 4th 138, 145; see also *Saltarelli & Stoponovich v. Douglas* (1995) 40 Cal. App. 4th 1, 5);
  - The non-statutory motion may be made at any time during litigation, including during trial (See *Sophias v. Bank of America* (1985) 172 Cal. App. 3d 583, 586; see also, Fresno Sup. County Local Rules 2.6.1(A) and 2.6.2(D)), and orally, and without prior notice (*Weil & Brown*, supra, at 7:321, citing *Kortmeyer v. Cal. Ins. Guarantee Assn.* (1992) 9 Cal. App. 4th 1285, 1293);
  - Finally, the grounds for a motion for judgment on the pleadings must appear on the face of the challenged pleadings or based on facts which the court may judicially notice (Weil & Brown, supra, at 7.292); a court may take judicial notice of records such as admissions or a party where they are not inconsistent with the allegations of the pleading before the court. *Del E. Webb Corp. v. Structural Materials, Co.* (1981) 123 Cal. App. 3d 593, 604-605.