**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**

| | | | |
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| **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**

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| | Aff.Sub.Wit. | |
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| | Inventory | |
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| | 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**

**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.**

**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.<br>DOD: 8-1-79 | | |
| Stella Brosi<br>DOD: 10-29-05 | | |
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| | Aff.Sub.Wit. | |
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| | Inventory | |
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| | Sp.Ntc. | |
| | Pers.Serv. | |
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| | 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**

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| | Aff.Sub.Wit. | |
| ✔ | Verified | |
| | Inventory | |
| | PTC | |
| | Not.Cred. | |
| | Notice of Hrg | |
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| | 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**

**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.**

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**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.***

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**<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.**

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**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**

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| | 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 | | |
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| Cont. from 091511, 111611 | | |
| | Aff.Sub.Wit. | |
| ✔ | Verified | |
| | Inventory | |
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| ✔ | 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.**

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

# 6 John P McCann & Elizabeth A McCann (Trust) Case No. 11CEPR00871

**Atty Thompson, Charles (of Corte Madera, for Daniel J. McCann – Petitioner)**
**Atty Dmytryk, Peter L (of San Francisco, for Colleen E. Dempsey and John P. McCann, Trustees– Respondents)**

**Petition for Determination of Intentional Interference with Right to Inherit; Negligent Interference with Right to Inherit: Damages and Declaratory Relief**

| | | |
|---|---|---|
| Elizabeth A. McCann DOD: 8/7/10 (surviving spouse) | | |
| John P. McCann DOD: 10/12/06 | | |
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| Cont. from | | |
| | Aff.Sub.Wit. | |
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| √ | Notice of Hrg | |
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| | Duties/Supp | |
| √ | Objections | |
| | Video Receipt | |
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| | 9202 | |
| √ | Order | |
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| | Status Rpt | |
| | UCCJEA | |
| | Citation | |
| | FTB Notice | |

**DANIEL J. McCANN,** Trust beneficiary, co-trustee and adult son of Trustors, is Petitioner.

**COLLEN E. DEMPSEY and JOHN P. McCANN**, Co-Trustees, Trust beneficiaries and daughter and son of Trustors, are Respondents.

**Petitioner requests** court determination that Respondents negligently or intentionally interfered with Petitioner's right to inherit, and seeks compensatory and punitive damages, as well as a judicial declaration of the validity of the Second and Third Amendments to the survivor's trust and exercise of powers of appointment.

**In asserting Causes of Action for Intentional and Negligent Interference with Right to Inherit, and for Declaratory Relief, Petitioner states:**

- P. McCann and Elizabeth A. McCann ("Trustors") executed the *John P. McCann and Elizabeth A. McCann Declaration of Trust, dated April 2, 1999* ("Trust");
- Trustors were specific in their determination that the Trust assets be distributed to their 10 children in equal shares and each child to receive a proportionate share of trust assets on the death of the surviving spouse;
- The Trust omits any provision requiring trustees to quantity all lifetime gifts or transfers of property to beneficiaries in order to determine that proportionate amount to distribute to beneficiaries;
- Upon Trustor John McCann's death on 10/12/06, the Trust was divided into 3 trusts: The Survivor's Trust (subject to Elizabeth McCann's revocation and amendment during her lifetime), Unified Credit Trust and Marital Trust;
- On 10/7/08, Elizabeth executed the document entitled "Resignation of Trustee and Appointment of Successor Trustees" *(copy attached to Petition*) by which Elizabeth resigned from all three trusts and nominated and appointed as successor trustees of each trust, John P. McCann (Jr.), Colleen E. Dempsey, Daniel J. McCann, and Kathleen M. Whitehurst – all nominees accepted and where appointed as co-trustees of the three trusts.

***SEE ATTACHED PAGE***

**NEEDS/PROBLEMS/COMMENTS:**

**Notes:**

- **In July 2011, the parties stipulated to a venue change from San Francisco County to Fresno County (Trustee John P. McCann is a resident of Fresno and Colleen Dempsey is a resident of the State of Texas).**

**Reviewed by:** NRN

**Reviewed on:** 1/3/12, 1/4/12

**Updates:**

**Recommendation:**

**File 6 - McCann**

**Cont'd:**

- Beginning in March 2010, Petitioner tried unsuccessfully to contact and speak with Elizabeth, who was living in Texas; Petitioner was told by Ms. Demsey his mother was either unavailable or could not come to the phone; Ms. Demsey further cancelled Elizabeth's cell phone and contact with Elizabeth was sporadic; by April 2010, Petitioner observed during the conversations he did have that Elizabeth was confused and unable to carry on a normal conversation;
- Further, when he visited his mother from 7/17/10 through 7/23/10, Elizabeth appeared delirious and delusional, and would comment she was in communication with her deceased husband and son. The hospice nurses and a physician each stated that Elizabeth was in the process of dying and when awake, no longer alert;
- Elizabeth died on 8/7/10. She was 85 years old and survived by her 10 adult children.

**Amendments to Survivor's Trust**

- The Survivor's Trust was amended and restated in its entirety by Elizabeth McCann's Second Amendment and Restatement on 5/21/07 – said Amendment did not change the ultimate equal distribution of Trust assets to the beneficiaries. This restated and amended Survivor's Trust was further amended on 10/7/08 and again on 11/19/08;
- Elizabeth McCann expressed concern regarding the 2008 amendments to the Survivor's Trust as she was residing in Vermont and did not have time to read or review the documents or discuss them with counsel;
- There was a further Second Amendment to the survivor's trust executed on 4/19/10, and a Third Amendment executed 7/31/10;
- Petitioner asserts co-trustees Colleen Dempsey and John McCann retained the Freeland, Cooper & Foreman law firm of San Francisco ("Freeland Firm") to execute these Amendments;
- However, Petitioner assert that the Freeland law firm did not meet with Elizabeth to discuss either the Second or Third Amendment to the survivor's trust, nor did the attorneys confirm Elizabeth's competency to execute either Amendment;
- Furthermore, despite his being a co-Trustee, Petitioner was never advised or consulted regarding the Second Amendment nor the Third Amendment, and he was only forwarded copies after Elizabeth's death;
- Finally, each "Acknowledgement" of the Second and Third Amendments is notarized by Colleen Dempsey, and there are no other witnesses to the purported Amendments.
- The effect of the Second and Third Amendments is to incorporate disposition of properties made by both Trustors by to their deaths, and to alter the Trust terms to disproportionately alter shares of the estate in favor of John McCann Jr. and Colleen Demsey;
- The Amendments contain complex provisions, which would have required a thorough explanation for Trustor Elizabeth, to have fully understood their meanings, however no explanation was provided; said provisions were the product of Elizabeth's growing incapacity, confusion, and susceptibility to undue influence and improper scheme perpetrated by John Jr. and Colleen;
- Petitioner seeks a court determination that John Jr. and Colleen tortuously interfered with Petitioner's right to inherit by improperly causing Elizabeth to execute the Second and Third Amendments that will deprive Petitioner of property he would have otherwise received under the Trustors' estate plan.

**Other allegations in Petition**

- Elizabeth was not provided the opportunity to discuss the 2008 amendments the Second Restatement with legal counsel and therefore consulted with Attorney Mary Tousignant in Old Orchard Beach, Maine (as stated, Elizabeth was living in Vermont at the time);
- During said consultation, Elizabeth reaffirmed her intent that real property located at 398 Hard Road, Quechee, Vermont ("Quechee Property") remain in joint ownership with Petitioner Daniel McCann, with right of survivorship; Elizabeth additionally executed 2 documents on 1/22/09 affirming that Petitioner had no outstanding financial obligations to her or her estate, and further, that all furnishings, artwork and contents of the Quechee property residence were solely Petitioner Daniel's property *(1/22/09 documents attached to Petition).*
- Following John McCann's death, Respondent Colleen Dempsey unitaterally and without request obtained the checkbooks of the Trustors and attempted to create a spreadsheet, dating back more than 20 years to identify monies given to each of the ten beneficiaries by their parents;
- In response, Elizabeth stated many times that what she and her husband did for the beneficiary minor's was nobody's business. ***See attached page***

**Cont'd:**

**Petitioner requests a court order:**

- That Respondents negligently or intentionally interfered with Petitioner's right to inherit;
- For compensatory damages according to proof;
- For a judicial declaration of the validity and enforceability of the Second and Third Amendment to the Survivor's Trust and Exercise of Powers of Apppointment;
- For punitive damages according to proof, due Respondents' willful, malicious and fraudulent acts as alleged above.

***Demurrer to Petition*, filed 12/14/11 by Respondents, states:**

- Each of Petitioner's causes of action fails to state facts sufficient to constitute a cause of action;
- Tortious interference with Right to Inherit (Petitioner's first two causes of action) has never been recognized as a cause of action in California, and was flatly rejected by the Cal. Court of Appeals as recently as June 2010 (see *Munn v. Briggs* (2010) 185 Cal. App. 4th 578 – attached to *Demurrer* as Exh. 3: "Under American law, testators have a right to completely disinherit nearly anyone, and there is no right to inherit…A purported injury to an intended recipient is not cognizable (because there is no right to inherit); instead, the probate system through the will contest…proceeding aims to offer all interested parties a forum in which to litigate the testator's true intentions." *Munn* at 586);
- As to Petitioner's 3rd cause of action for Declaratory Relief, C.C.P. §1060 makes clear that such relief is not available when the written instrument in controversy is a will or trust.
- The Second Amendment provides, in relevant part, that certain lifetime gifts and other transfers by Elizabeth to her children, as well as any assets passing outside the Trust, would be taken into account in computing each child's equal share of the Trust estate upon her death;
- The Third Amendment provides that any portion of the Trust estate distributable to Elizabeth's son Kevin McCann shall be administered in a separate trust for his benefit, rather than being distributed to him outright and free of trust;
- Elizabeth passed away 8/7/10, and the *Notification by Trustees* was served on all beneficiaries, Petitioner included, on 10/29/10;
- Despite Petitioner's allegations, the Second Amendment actually ensures proportionately equal shares for all beneficiaries by requiring consideration of significant inter vivos gifts and assets passing outside the Trust, and the Third Amendment has no effect on the size of the those shares whatsoever;
- Further, while the Petition alleges the Amendments are "inimical to Elizabeth McCann's core principles and none of them represented her free and knowing choice" and that Respondents perpetrated the improper scheme and unduly influenced Elizabeth, Petitioner does not allege any specific facts or actions by Colleen and John that would support such allegations of undue influence or improper scheme;
- Finally, instead of directly challenging the validity of the Second and Third Amendments by a Trust contest in probate pursuant to PrC §17200, Petitioner seeks relief by asserting common law civil claims of tortious interference and by requesting declaratory relief;
- Under *Munn*, Petitioner had an adequate remedy under the Probate Code, which renders his first two causes of action invalid as a matter of law;
- Petitioner may argue that under PrC §16061.8, he no longer has a probate code remedy as the statute of limitations on a trust contest lapsed on 2/28/11 (the date he filed his initial Petition in S.F. Superior Court);
- The Court in *Munn* sustained the demurrer to the tortious interference petition without leave to amend, despite the fact that the statute of limitations governing the petitioner's ability to contest codicil had lapsed.

***See attached page***

**Cont'd:**

- Petitioner's cause for declaratory relief must also fail because, as stated above, declaratory relief is not an available remedy to determine rights under a will or trust;
- Petitioner may argue his declaratory relief cause of action should be construed as an action to contest the Trust under PrC §17200, however this would fail as Petitioner's Petition does not allege specific facts or cite legal authority to constitute ground for invalidating the Amendments, and the Court cannot infer Petitioner's reliance on probate code rights and remedies where a Petition does not alleged.
- **Respondents request** that the Court sustain the demurrers to Petitioner's cause of action, without leave to amend.

***Petitioner's Opposition to Demurrer*, filed 12/22/11, states:**

- Respondents' demurrer to the 3rd cause of action for declaratory relief is a "general" demurrer as opposed to a "special" demurrer (*McKenney v. Purepac Pharmaceutical Co.* (2008) 167 Cal. App. 4th 72, 77) – this distinction is crucial because if the 3rd cause of action states any valid cause of action, that action overcomes the general demurrer; the test is whether the claim states any valid claim entitling Petitioner to relief;
- If the essential facts of some valid cause of action are alleged, as here, the petition is good and demurrer must be overruled (*Quelimane Co. v. Stewart* (1998) 19 Cal. 4th 26, 38-39; further authority cited in Opposition)
- Petitioner's Petition clearly states a valid claim for relief under PrC 17200 (b)(3), to determine the validity of a trust provision ("Petitioner desires a judicial determination and declaration regarding the validity and enforceability of the Second and Third Amendment to Surviving Trustor's Trust and Exercise of Powers of Appointment," *Petition* at pgs. 10, 11-13); and the Petition expressly requests such relief; as such, the general demurrer should be overruled;
- However, should the Court alternatively desire a clearer statement of the PrC §17200 claim, Petitioner requests leave to amend the 3rd cause of action to that end (see *Goodman v. Kennedy* (1976) 18 Cal. 3d 335, 349 (it is an abuse of discretion for the court to deny leave to amend where there is any reasonable probability that plaintiff can state a good cause of action);
- Furthermore, the Petition does state a valid claim of Interference with Right to Inherit; the Restatement Second of Torts §774B recognizes the tort of intentional interference with an inheritance or gift: "One who by fraud or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received is subject to liability to the other for loss of the inheritance or gift." (Rest. 2d Torts, §774B);
- The elements of intentional interference with inheritance are congruent with those of intentionaly interference with economic relations as the latter tort is define in California *(legal authorities and argument follows);*
- The CA Supreme Court now relies on the Restatement Second of Torts as persuasive and presumptively correct authority without need to explain why it is authoritative; when there is no contrary authority, the Restatement is the most authoritative source of CA tort law;
- There is no CA authority (including Munn) which outright rejects the tort of intentional interference with an inheritance expectancy; to the contrary, CA's treatment of intentional interference with economic relations suggest a position favorable to the Restatement;
- **Petitioner requests** the Court overrule the Demurrer in its entirety or grant Petitioner leave to amend.

***See attached page***

**Cont'd:**

***Respondents' Reply to Opposition of Demurrer*, filed 12/28/11, states:**

- In his Opposition to Respondents' Demurrer, Petitioner cites to the *Goodman* case that if there is reasonable probability that plaintiff can state a good cause of action, it is an abuse of discretion for a court to deny leave to amend; however, as this very case holds, it is also true that a court may uphold a demurrer sustained without leave to amend when a plaintiff does not state a valid cause of action and lacks the ability to plead an prove facts which would establish the requisite elements of the cause of action (*Goodman* at 349-50);
- Petitioner has failed to state a valid cause of action and the Demurrer should be sustained without leave to amend;
- Further, with respect to Petitioner's first two causes of action for intentional interference, Petitioner ignores the clear precedent of *Munn (*"We decline [petitioner's] invitation to recognize a new tort that would potentially undermine the new law governing no contest clauses and that would create sweeping changes in the administration of will contests in probate," *Munn at 593)*, by relying on the Restatement Second of Torts and Oregon law to argue that the theory of tortious interference with the right to inherit should be recognized in CA;
- It is the long standing position of CA courts that the restatement of law summaries are not binding authority (*legal authorities cited*);
- Finally, regarding his 3rd cause of action for declaratory relief, Petitioner erroneously claims his cause of action expressly seeks relief under PrC § 17200 (b)(3);
- Petitioner seeks express relief under common law tort, entirely avoiding any reference to a probate action; in the caption of his Petition, Petitioner sues Colleen and John in their individual capacities and not as parties in their capacities as trustee; further, nowhere in the Petition is 17200 (b)(3) cited or any other probate code section as authority for a cause of action --- as is required under CRC 7.102 and Fresno County Superior Local Rule 7.1.1.C;
- Even if one infers that the Petition seeks relief under §17200(b)(3), a claim must be commenced by filing a petition stating facts showing the petition is authorized under the probate code;
- Petitioner's attempt to mold a civil tort claim into a probate action, which if brought now would be barred by the statute of limitations.
- **Respondents request** the Court grant their Demurrer to each cause of action without leave to amend.

**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)**

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|---|---|---|
| Age: 2 years | | |
| DOB: 8/10/09 | | |
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| 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)**

| |
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| Reviewed by: KT |
| Reviewed on: 12/21/11 |
| Updates: |
| Recommendation: |
| File 7 - Catuiza |

**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)**

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|---|---|---|
| DOD: 1/30/11 | | |
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| 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**

**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.<br><br>**RANDALL G. HURLEY**, named alternate co-executor, declines to serve.<br><br>Full IAEA – ok<br><br>Will dated 12-15-94<br><br>Residence: Fresno<br>Publication: Fresno Business Journal<br><br>**Estimated value of estate:**<br>Personal property: $214,018.76<br><br>**Probate referee: Rick Smith** |
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| | **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)**

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|---|---|
| Age: 11 years | |
| DOB: 8/11/2000 | |
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| 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 |
| | 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 (SNT) 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 public benefits unless the assets are directed to a special needs trust;
- 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**;
- 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.

***~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.**

**<u>Note</u>: *Notice of Ruling of Petitions to Compromise Minor's Claim* filed on 12/27/2011 indicates that in Case #07CECG03870 on 12/22/2011 the Honorable M. Bruce Smith made a tentative ruling that the claim of Kyle Yang is granted pending the approval of the *Petition to Establish a Special Needs Trust* (*copy of tentative ruling is attached as Exhibit A*.)**

***~Please see additional page~***

| | |
|---|---|
| Reviewed by: | LEG |
| Reviewed on: | 12/27/11 |
| Updates: | 12/30/11 |
| Recommendation: | |
| File 10 - Yang | |

**Petitioner states, continued:**

- 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 Kyle's 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****, which states 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****.)*

**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.**

***~Please see additional page~***

***Verified Supplement to Petition for Order Establishing Special Needs Trust* states:**

- Article Seven, Section Seven of the proposed SNT authorizes the Trustee to engage the services of a **Government Benefits Advisor** to advise the Trustee concerning the availability of government benefits for the Beneficiary, including CA Regional Center Benefits, Medi-Cal, CA Children's Services (CCS), Supplemental Security Income (SSI), and IHSS which the Beneficiary may be entitled to receive;
    - Petitioner anticipates the Trustees will spend and requests Court authorization to spend up to **$2,500.00** for such services, subject to review of this Court at the next accounting, for up to **11.1 hours** of counsel at an hourly rate of **$225.00/hour** to investigate and implement any public benefits to which the Beneficiary may be entitled;
    - **JAMES HUYCK** will act as an advocate and consultant to assist the Trustee in fulfilling the SNT's requirement to access public benefit resources for the Beneficiary in order to preserve the Beneficiary's trust funds, by assisting the Beneficiary and his family in becoming eligible for and maximizing receipt of government benefits; Mr. Huyck makes recommendations to the Trustees regarding needs of the Beneficiary which cannot be met through public resources and which may be best met through funding from the Beneficiary's trust.

- Article Eight of the proposed SNT authorizes the Trustee to engage the services of a **Care Manager** to advise the Trustee regarding the supplemental needs of the Beneficiary;
    - Petitioner anticipates the Trustees will spend and requests Court authorization to spend up to **$2,500.00** subject to review of this Court at the next accounting;
    - The Care Manager provides an evaluation of the Beneficiary's needs in the areas of his physical and medication needs, personal care, rehabilitation, specialized equipment needs, physical therapy and occupational therapy needs, psychological assessments, education and training programs, day programs and recreational social needs;
    - Petitioner anticipates up to **20 hours** of services at a rate of **~$125.00 per hour**.

***Declaration of Melinda S. Bell in Support of Fee Request*** identifies and itemizes her services performed in connection with the petition to establish the special needs trust for Kyle Yang, and requests payment of attorney fees and costs for **10.02 hours @ $350.00 per hour** (plus **$78.00** for CourtCall), for a total fee request of **$3,586.00.**

**NEEDS/PROBLEMS/COMMENTS, continued from first page:**

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.—*Verified Supplement to Petition for Order Establishing Special Needs Trust* states the address and parents of Kyle Yang.**

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. — Revised proposed SNT and proposed order submitted 12/30/2011.**

***~Please see additional page~***

**NEEDS/PROBLEMS/COMMENTS, continued**

b. **Article Three Section 1: Distribution standard should include language distinguishing "distributions" from "disbursements" such that disbursements are payments made, including on-going payments, for special needs services for the beneficiary, while distributions 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."***
**—Revised proposed SNT submitted 12/30/2011.**

c. **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. —Revised proposed SNT submitted 12/30/2011.**

d. **Article Six Section 2(B) and 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,….*" —Revised proposed SNT submitted 12/30/2011.**

*e.* **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."* —Revised proposed SNT submitted 12/30/2011.**

*f.* ***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.) —Revised proposed SNT and proposed order submitted 12/30/2011.**

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 date of SNT creation and the dollar amount 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 IRREVOCABLE 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 lien amount to be paid prior to funding the SNT pursuant to Probate Code § 3604(d).) —Proposed order submitted 12/30/2011.**

**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**

**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**

**Cont. from 083011, 101911**

| | | |
|---|---|---|
| | 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 | X |
| | UCCJEA | |
| | Citation | |
| | FTB Notice | |

**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.

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.

**On 7-15-11,** the court set this status hearing for termination of conservatorship for deceased conservatee.

**Status Reports filed by Attorney LeVan states an account is in process.**

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."

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.

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**

## 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**

## 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** |

**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:**

**Note: Please see competing Petition filed by maternal grandmother Julie Salinas on page 16B**

**Note: 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 |

## 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.**

**NEEDS/PROBLEMS/COMMENTS:**

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

**If this matter goes forward for minor Alex, the following issues exist:**

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 or consent and waiver of notice or declaration of due diligence on:**
   - **Alex Colmenero (minor, age 15)**
   - **Gina Christina Guerrero (Mother)**
   - **Robert Colmenero (Alex' father)**

**SEE PAGE 2**

**Reviewed by:** skc
**Reviewed on:** 12-21-11
**Updates:** 12-28-11
**Recommendation:**
**File 17 – Ybarra & Colmenero**

**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 | | |
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| Cont. from | | |
| | Aff.Sub.Wit. | |
| ✓ | Verified | |
| | Inventory | |
| | PTC | |
| | Not.Cred. | |
| | Notice of Hrg | X |
| | Aff.Mail | |
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| | 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.**

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

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

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

**Atty Rindlisbacher, Curtis (Court-appointed for Conservatee Robert J. Johansen)**

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

**Robert J. Johansen (89)**
**DOB: 11-4-22**

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|---|---|---|
| | **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** | |
| | **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:**

**Court Investigator advised rights on 12-29-11.**

**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, and authorization to move the Conservatee's residence.**

**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.**

**SEE PAGES 2-3**

**Reviewed by:** skc

**Reviewed on:** 12-28-11

**Updates:** 1-3-12

**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.***

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**Court Investigator Jennifer Daniel filed a report on 12-30-11.**

**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)**

**Atty Rindlisbacher, Curtis (Court-appointed for Conservatee Robert J. Johansen)**

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

---

**NEEDS/PROBLEMS/COMMENTS:**

1. **Need Confidential Conservator Screening Form for both Petitioners. *(Note: Joyce's was filed 12-29-11 in Mrs. Johansen's case only.)***

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

3. **Petitioner filed a civil Proof of Service indicating personal service of a Notice of Hearing and a copy of the temporary petition on Robert J. Johansen; however, the Notice of Hearing (a mandatory Judicial Council form with proof of service attached) has not been filed. Need Notice of Hearing.**

4. **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)**

   **Note: 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.**

   **Note: Attorney Amador provided spoke with most relatives by phone and confirmed their agreement.**

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

**Faye M. Johansen (92)**
**DOB: 6-29-19**

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|---|---|---|
| | **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** | |
| | **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:**

**Court Investigator advised rights on 12-29-11.**

**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, and the power to move the Conservatee's residence.**

**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.**

**SEE PAGES 2-3**

**Reviewed by:** skc
**Reviewed on:** 12-28-11
**Updates:** 1-3-12
**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.***

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**Court Investigator Jo Ann Morris filed a report on 12-30-11.**

**SEE PAGE 3**

**20 Faye M. Johansen (CONS/PE) Case No. 11CEPR01122**

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

**Atty Helon, Marvin T. (Court-appointed for Conservatee Faye M. Johansen)**

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

**SUMMARY (Continued):**

**NEEDS/PROBLEMS/COMMENTS:**

6. **Need Confidential Conservator Screening Form for Sharon Shields.**

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

8. **Petitioner filed a civil Proof of Service indicating personal service of a Notice of Hearing and a copy of the temporary petition on Faye M. Johansen; however, the Notice of Hearing (a mandatory Judicial Council form with proof of service attached) has not been filed. Need Notice of Hearing.**

9. **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)**

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

   **Note: Attorney Amador provided spoke with most relatives by phone and confirmed their agreement.**

10. **Because the order was modified and granted on an ex parte basis, there is no order in the file for signature.**
    **If temporary letters are extended with additional powers requested, new order and 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

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| | **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:** 1/4/12
**Recommendation:**
**File 1 - Cenci**



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

- 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.

**Objection of Richard G. Cenci,** filed 12/30/11, states:

- Petitioner asserts his Motion should be granted under CCP 438; however the CCP only applies when the probate code does not provide any applicable rules (PrC §100); there is no need to default to the CCP as the probate code provides all requirements and procedures for a PrC §17200 petition;
- Objector however is not required to assert a claim against Bickel, nor show that Bickel committed wrongful acts; Objector's Petition asks for instruction concerning the internal affairs of the survivor's trust and bypass trust and for an order compelling Bickel as trustee of the survivor's trust to transfer assets pursuant to PrC §17200;
- This is a Petitioner brought under the probate code; it is not a civil complaint;
- §17200 allows a trustee or beneficiary to petition the court concerning a trust's internal affairs (17200 (a)), proceedings concerning a trust's internal affairs include instructing a trustee (17200(b)(c)) as well as compelling redress of a trust breach by any available remedy (17200 (b)(12) emphasis added);
- Objector is requesting the court instruct Bickel to redress a breach of trust, committed by past survivor's trust trustees, by making an order compelling Bickel to transfer assets from the survivor's trust back to the bypass trust;
- Bickel is still in possession of the Charles Schwab account (#2183-7008), which is an asset of the bypass trust (Bickel acknowledged this at the court hearing 8/5/11);
- Furthermore, Bickel raised no objection to Cenci's motion to amend the petition to add Bickel as a respondent nor did Bickel file a responsive pleading to the amended petition;
- Trial is on 1/10/12; there is no prejudice to Bickel in waiting for the trial for this motion to be heard.
- In conclusion, as a result of Bickel's own actions in maintaining control over a bypass trust assets, and as Cenci seeks an order compelling Bickel to transfer survivor's trust assets to the bypass trust under §17200, Bickel is a properly named individual in the petition and his instant Motion should be denied in its entirety.

# 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

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| | **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.**

**2. 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.