ATTENTION

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

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

Thank you for your patience.

1A Thelma Boalbey (Estate) **Case No. 08CEPR00697**

Atty Kruthers, Heather H (for the Public Administrator)

Atty Capata, Julian Eli (of Los Angeles, for Barbara Rivera, beneficiary – Petitioner)

(1) Petition to have the Public Administrator Cited to Appear before the Court Re: Condition of Estate and Reasons why the Estate Cannot be Distributed and Closed; and (2) Payment of Three Pecuniary Devises with Interest at Seven Percent (7%); and (3) to Surcharge Administrator for Unnecessary and Unreasonable Delays in Closing said Estate; and (4) Points and Authorities; and (5) Declaration of Barbara Rivera

DOD: 8/24/07		
Cont. from 120511		
	Aff.Sub.Wit.	
√	Verified	
	Inventory	
	PTC	
	Not.Cred.	
√	Notice of Hrg	
√	Aff.Mail	
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	x
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

BARBARA RIVERA, beneficiary and named executor in Decedent's Will, is Petitioner.

Petitioner states:

- On 7/18/08, the Public Administrator was appointed as Administrator by *Ex Parte* Order pursuant to PrC §7660 et seq. (*Summary Disposition of Small Estates*);
- None of Decedent's devisees named in her Last Will were notified either before or after appointment of the Public Administrator;
- Decedent's estate could have been closed within 6 months of the Public Administrator's appointment, or within one year as required by PrC §12200(a). This section requires that an estate be closed within one year, after issuance of Letters, in which a federal estate tax return is not required;
- Here, Letters did not issue because the Public Administrator was appointed pursuant to PrC §7660(a)(1); however, they would have issued on or about 7/18/08;
- This past August 2011 was the fourth anniversary of Decedent's death and there is no reason for this extended delay on a "small estate" probate case filed under PrC §7660 et seq.;
- Decedent's Last Will designates gifts to devisees (one of whom passed away on 2/15/09);
- The Public Administrator should be surcharged with the amount of money due the pecuniary devisees' as interest on their bequests, with said surcharge amount to be paid by the Administrator's personal funds and the forfeit of any commission;
- Per PrC §12003, beneficiaries are entitled to interest on their pecuniary bequests at 7% simple interest. Section 12003 provides in relevant part: "If a general pecuniary devise…is not distributed within one year after the..death, the devise bear interest thereafter." The effective rate of interest is 7% (see PrC §12001);
- The total amount due the named beneficiaries, with interest included (interest calculated from 8/24/08 (year after date of death) – 10/31/11):
  - Norma Raffeedy (sister; *now deceased*): $6,115.21 (original devise: $5,000);
  - Rose A. Harb (sister): $6,115.21 (original devise: $5,000)
  - Nancy Almendras (niece): $1,070.00 (original devise: $1,000)

SEE ATTACHED PAGE

NEEDS/PROBLEMS/COMMENTS:

CONTINUED TO 2/27/12 PER STIPULATION BETWEEN PARTIES.

Page 1B in the Public Administrator's Final Account and Petitioner's Objections thereto

The instant Petition was continued from 12/5/11.

1. **Need Proposed Order.**

Note: The Fresno County Public Guardian was Decedent's Conservator prior to her death (04CEPR01188).

Reviewed by: NRN

Reviewed on: 1/11/12

Updates: 1/17/12

Recommendation:

File 1A - Boalbey

1A Thelma Boalbey (Estate) **Case No. 08CEPR00697**

CONT'D:

Dept. 303, 9:00 a.m. Monday, January 23, 2012

- Furthermore, in related Fresno County Superior Court Case 04CEPR01188 (Decedent's Conservatorship Case –Public Guardian was Conservator of the Estate), the Public Guardian indicated in its final accounting and request for discharge (filed 9/23/10) that a 1999 Federal Individual Income Tax Return balance of $3,658.00 was owed;
- However, the $3,658.00 is in fact not owed, nor was it a lien on Decedent's funds at the time of that final accounting because: 1) *Per Declaration of Petitioner Barbara Rivera,* attached to the instant Petition, the IRS had been deducting from Decedent's monthly Social Security payments an amount to cover Decedent's lien due on the 1999 Tax Return; and 2) because as on 4/15/09, the lien was no longer in existence pursuant to U.S. Code Title 26, 6502 and that as such, an Court may not approve such a claim barred by the statute of limitations (see PrC §9253). For these reasons, the lien amount should never have been shown as a liability on the Public Guardian's last account in the Conservatorship case;
- The Estate is now in a position to be closed, except for the payment of the interest due on the pecuniary gifts as mentioned above;
- Finally, the Public Administrator's Commission should be reduced to no dollar amount, because of the Public Administrator's delay or mismanagement of this small estate; per PrC § 12205(a), a court may reduce a personal representative's compensation by an amount the Court determines as appropriate if said court makes 3 determinations: 1) the time taken for the administration exceeds the one-year; 2) that time taken was within the control of the representative, and 3) the delay was not in the best interest of the estate or interested persons.
- **Petitioner requests the Court order:**
    - **That the pecuniary gifts be made to the devisees;**
    - **That the interest (amounts identified above) be paid to devisees by the Administrator personally (including daily interest calculated after 10/31/11); and**
    - **That the Public Administrator to close the Estate.**

***Objection by Public Administrator*, filed 11/30/11, states:**

1. **The Estate could not close before now because of tax issue;**
2. **On 8/20/10, Deputy PA Noe Jimenez receive the 199 tax return for New York State Income Tax and 2004 and 2008 Fed Income Taxes from Accountant Paul Dictos; on 4/1/11, Deputy Jimenez received notice from NY State that all Ms. Boalbey's tax liens were satisfied; then on 8/15/11 received a letter from the Treasury Dept. that a 2008 return was not filed, and that the estate had a $181.00 tax credit; finally on 10/18/11, Deputy Jimenez received $181.00 plus $18.25 interest from the US Treasury (one week before the PA or County Counsel know of a surcharge petition filed by Petitioner – one phone call by either Petitioner or her attorney would have avoided the time and expense of this Petition);**
3. **The PA at all times worked on this case in close connection with his accountant and as a result obtained a refund and interest on federal taxes;**
4. **The PA would additionally like to make 3 specific comments or objections: 1) <u>The PA will pay the devisees the interest that has accrued, but from the estate residue</u> – to reiterate, the PA did not mismanage or delay the administration of the estate and should therefore not be responsible for the interest payments;**
5. **Further, regarding Petitioner's assertion that the PA should have included a federal tax liability on her Final Account, Petitioner's attorney in fact filed a "No Objection to Amended Account."**
   <u>P.A. requests the Petition be denied, and that a status hearing be set 45 days from now for the PA to file his final account</u>.

1A Thelma Boalbey (Estate) Case No. 08CEPR00697

***Reply to Objection*, filed 12/1/11, states:**

1. **P.A.'s Objection was not received in time pursuant to the C.C.P. (9 court days before the hearing);**
2. **Regarding the "No Objection" filed, there would be no objection in 2010 to a "liability" when the statute had run and that as of 4/16/09, the lien was "out of existence;"**

3. **Further, no creditor's claim had been filed by the State of New York; and the accountant's advice was in error as of 1/18/09, PA could have officially discontinued his involvement in the estate; and the IRS claim had expired 10 years after the tax return's filing date.**

***Public Administrator's Response to Reply,* filed 12/2/11states: Objection was timely pursuant to Local Rule 7.4.2.**

Notes to Judge:

1. **As stated in the Petition, devisee Norma Raffeedy (Decedent's sister) passed away on 2/15/09, and also per Petition, the gift will now go to Mrs. Raffeedy's 2 daughters, Thrya Riley and Jaleela Kuge. Presumably, any probate of Mrs. Raffeedy's estate has concluded; if not, said proposed gifts to her daughters should be directed to Mrs. Raffeedy's personal representative.**
2. ***Per Declaration of Petition Barbara Rivera,* attached to *Petition,* Ms. Rivera moved Decedent from New York State to Clovis, CA, when her aunt (Decedent) became ill (at that time, Ms. Rivera was Decedent's "guardian" per New York State court order); during the time the Public Guardian was the Conservator of the Estate, Ms. Rivera personally took care of Decedent every day and took her to all of her doctor appointments.**
3. **U.S. Code Title 26, 6502 reads:**

(a) Length of period

Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—

(1) within 10 years after the assessment of the tax, or

(2) if—

(A) there is an installment agreement between the taxpayer and the Secretary, prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer at the time the installment agreement was entered into; or

(B) there is a release of levy under section 6343 after such 10-year period, prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release.

If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.

(b) Date when levy is considered made

The date on which a levy on property or rights to property is made shall be the date on which the notice of seizure provided in section 6335 (a) is given.

(emphasis added)

4. **PrC Section 9253 reads:**

A claim barred by the statute of limitations may not be allowed by the personal representative or approved by the court or judge.

5. **PrC Section 12205 (a) reads:**

(a) The court may reduce the compensation of the personal representative or the attorney for the personal representative by an amount the court determines to be appropriate if the court makes all of the following determinations:

(1) The time taken for administration of the estate exceeds the time required by this chapter or prescribed by the court.

(2) The time taken was within the control of the personal representative or attorney whose compensation is being reduced.

(3) The delay was not in the best interest of the estate or interested persons.

1B Thelma Boalbey (Estate) **Case No. 08CEPR00697**

Atty **Kruthers, Heather H (for the Public Administrator - Petitioner)**

Atty **Capata, Julian Eli (of Los Angeles, for Barbara Rivera, beneficiary)**

Public Administrator's Final Account and Report (Prob. C. 7665)

DOD: 8/24/07		
Cont. from		
	Aff.Sub.Wit.	
√	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
√	**Notice of Hrg**	
√	**Aff.Mail**	w
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
√	**Objections**	
	Video Receipt	
	CI Report	
	9202	
√	**Order**	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

PUBLIC ADMINISTRATOR, Administrator, is Petitioner.

Account Period: 10/26/09 – 12/27/11

Accounting	-	$89,394.23
Beginning POH	-	$54,244.14
Ending POH	-	$57,505.80
Administrator (statutory)	-	$2,206.57
Attorney (statutory)	-	$2,206.57
Bond fee	-	$670.47

Petitioner requests distribution, pursuant to Decedent's Will, as follows:

Norma Rafeedy (deceased): $5,000.00 plus $1,115,21 in interest (*Petition states Ms. Rafeedy passed away during the administration of this Estate. Petitioner will determine the beneficiaries of Ms. Rafeedy's share prior to the hearing on this Final Account Petition)*

Rose Harb: $1,115,21 in interest (Petitioner states this distributee has already received $5,000 in preliminary distribution)

Nancy Almendras: $222.92 in interest (Petitioner states this distribute has already received $1,000.00 in preliminary distribution)

Barbara Rivera: $10,738.86

See attached page

NEEDS/PROBLEMS/COMMENTS:

CONTINUED TO 2/27/12 PER STIPULATION BETWEEN PARTIES.

Reviewed by: NRN
Reviewed on: 1/12/11
Updates: 1/17/12
Recommendation:
File 1B - Boalbey

Cont'd:

Dept. 303, 9:00 a.m. Monday, January 23, 2012

Objection to Public Administrator's Final Accounting and Report, filed 1/10/12, states:

- Barbara Rivera ("Objector") objects to the Public Administrator's disbursements as stated on Schedule D ("Disbursements") on the Final Account;
- The $1,540.46 paid for NY State income tax – 1999 should be returned;
    - Public Administrator did not disclose any amount owed to New York
    - New York State did not file a creditor's claim in this Estate
    - PrC 9200 should apply to New York State: "…a claim by a public entity shall be filed within the time otherwise provided in this part…" §9200(a). §9200(b) reads that "public entity" as used in this chapter has the meaning provided in §811.2 of the Government Code. Objector herein states that although New York State does not come within the §811.2 Gov't Code definition, the general wording of §9200 should have applied to New York
- Public Administrator should be surcharged the unauthorized payment of $3,658.00 (Income tax for 1999), for $14,819.97 paid to the US Treasury (1999 Income tax), and for $3,500.00 paid to Paul A. Dictos for performing unnecessary work
    - Decedent owed no taxes; even if they were, per the IRS and US Code regulations, that statute of limitations had run on Decedent's 1999 federal taxes by at least 4/16/09
    - The taxes were not owed because the IRS had been deducting from Decedent's monthly Social Security payments an amount to cover Decedent's lien payment(s) due on Decedent's Federal Individual Income Tax Return
- Public Administrator should pay the estate devisees their accrued interest due to the Public Administrator's delay in closing this Estate
    - Public Administrator was appointed in July 2008
    - Letters may have not issued since it was initially filed pursuant to §7660 (*re summary disposition of small estate*s), however this past August was Decedent's fourth anniversary of the date of her death
    - PrC §12200 provides that the personal representative shall either petition for an order for final distribution or make a status report not later than one year after the date letters issued on an estate where a federal estate tax return is not required (§12200(a)); if required, within 18 months
    - There is no reason for the extended delay on a small estate probate matter filed pursuant to §7660
- Because of the Public Administrator's delay or mismanagement, it should receive no statutory commission
    - Time taken for Public Administrator to close this Estate exceeds that required by §12200(a)
    - Pursuant to §12205, the Court may reduce the personal representative compensation to a court-determined more appropriate amount, if it makes all of the following determinations: 1) time taken for administration exceeds one year 2) time taken was in personal representative's control and 3) the delay was not in the estate's or estate's interested persons' best interests.

<u>SEE ATTACHED PAGE</u>

- As it was clear no creditor's claim was to be filed with the estate, there is further no reason the administration should not have closed sooner, and the Court should determine that the length of time it has taken to close the Estate is not in the best interest of the estate or interested persons
- §12205(b) and relevant legislation provides that an order under this code section may be made to guard beneficiaries and interested persons against the payment of compensations otherwise allowable for services rendered by the personal representative

Conclusion: As there were no tax or other material liabilities owed by Decedent, Objection requests the Court should order a surcharge against the Public Administrator in the amount of $28,678.34 (which includes Petitioner's requested statutory fee amount of $2,206.57), with the break down as follows:

1. **NY State Income Tax 1999 (8/25/10) $1,540.46**
2. **Income tax due 1999 – 1040 (8/25/10) $3,658.00**
3. **Income tax due 1999 – 1040 (5/4/11) $14,819.97**
4. **Paul Dictos 1999 US and NY Income Tax (11/16/11) $750.00**
5. **Paul Dictos 1999 US and NY Income Tax (9/8/10) $3,250.00**
6. **Petitioner's statutory fee request $2,206.57**

6. **Interest – heirs of Norma Refeedy $1,115.21**
7. **Interest - Rose Harb $1,115.21**
8. **Interest – Nancy Almendras (1/23/12) $222.92**
9. **Petitioner's statutory fee request: $2,206.57**

Atty Erlach, Mara M. (for Terese Ann Cenci McGee, daughter – Petitioner)
Atty Sanoian, Joanne (for Richard Cenci, son – Objector)
Atty Sullivan, Robert (for Bruce Bickel)

Petition for Interpretation of Holographic Instruments [Prob. C. §17200(b)(1)]

DOD: 8/31/11		
Cont. from		
	Aff.Sub.Wit.	
	Verified	
	Inventory	
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	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

TERESE ANN CENCI MCGEE, daughter and first named executor without bond, is Petitioner.

Petitioner seeks a ruling from the Court that three holographic instruments are codicils to the 12/6/07 Will of Decedent Esther Cenci ("Will").

Petitioner states:

1. Esther C. Cenci ("Decedent") executed the Will, which provided for specific bequests and poured the residue of her estate over into the Survivor's Trust;
2. Recently, it was discovered that Decedent executed at least 3 holographic instruments in 2010 which could be testamentary in nature;
3. These holographic documents are dated 8/20/10, 8/26/10, and 9/6/10, and all have been lodged with the Court.
4. Petitioner believes these documents are codicils to the Will, but requests clarification from this Court as to the effect of the holographic instruments.

Objection of Richard Cenci, filed 12/6/11, states:
A. The interpretation of holographic instruments is moot because the probate proceeding is no longer necessary. Specifically:

- There are currently no estate assets, as Decedent transferred the 1932 Packard automobile to the Survivor's Trust prior to her death.
- The Trustee of the Survivor's Trust (Bruce Bickel) has told the Court and Objector's attorney that he considers the furniture and furnishings (of Decedent's residence) to be assets of the Survivor's Trust; as such, there is nothing to probate under the Will.
- Furthermore, when previously a personal representative of Decedent's estate was necessary because Decedent was named as a respondent in related litigation involving the Family Trust, Decedent was ultimately dismissed due to her death and therefore a probate proceeding is no longer necessary.

SEE ATTACHED PAGE

NEEDS/PROBLEMS/COMMENTS:

Note: This same Petition has been filed in the Estate proceeding (11CEPR00907).

1. **Need Order.**

Reviewed by: NRN
Reviewed on: 1/19/12
Updates:
Recommendation:
File 2 - Cenci

2 The Cenci Family Trust (Trust) Case No. 10CEPR00244

CONT'D:

B. The holographic instruments are not codicils to the Will. Specifically:

- The 8/20/10 and 8/26/10 documents appear to be letters to Decedent's attorney with no real intent specifically shown to make the letters "codicils" to the Will.
- The only dispositive provisions concern the distribution of the Packard automobile and household furniture, which are assets no part of the estate.
- There are no nominations in the documents, and the majority of their contents concern Decedent's Survivor's Trust and family issues.
- The 9/6/10 document has no dispositive provisions, nor does it nominate any personal representatives, and there is nothing in the document indicating it is a "codicil," but merely a letter of no consequence addressed to Decedent's attorney.
- Even if the Court were to find that the 8/20/10 and 8/26/10 documents were somehow meant to be "codicils," there are no assets to distribute, such that any interpretation would be fruitless.

C. The holographic instruments cannot change the terms of the Survivor's Trust:

- If the creating instrument requires a specific reference to the power, the power may be exercised only by such specific reference to the power. *Estate of Muriel Eddy* (1982) Cal. App. 3d 292.
- PrC §632 states that if the creating instrument expressly directs that a power of appointment be exercised by an instrument that makes specific reference to the power or instrument that created the power, the power can be exercised only by an instrument containing the required reference.
- Here, the Survivor's Trust specifically requires that that the instrument, in this case, the holographic documents, has to refer to the power of appointment in those documents, which they do not.
- The Cenci Family Trust specifically states that under the terms of the Survivor's Trust, on surviving settlor's death, the trustee shall distribute the remainder of the survivor's trust… to such one or more persons or entities..on such terms or conditions..as the surviving settlor shall appoint by a valid instrument or lifetime document that was executed after deceased settlor's death and specifically refers to this power of appointment. (Article Seventh, Section 7 of the Trust)
- Unlike the 3 handwritten documents at issue here, Decedent's Will confirms this absolute requirement as it references Article Seventh, Section 7 of the Family Trust and specifically states that she (Decedent) is exercising her power of appointment.

D. The holographic instruments do not meet the requirements of Codicil:

- Objector incorporates the Objection to the Petition for Probate of Will and Letters Testamentary filed by Objector on 10/14/11 (*Case No. 11CEPR00907*).
- The holographic instruments do not meet the statutory requirements of codicils under applicable probate code sections, as they are the product of fraud, or undue influence, or duress.
- There is a trial in this case scheduled for 1/10/12. The issues herein may be moot after the trial.

Objector prays for an Order that 1) the three handwritten documents are not codicils and 2) that the three handwritten documents do not affect the dispositive provisions of the Survivor's Trust.

3A ELAINE A. MCLAIN (TRUST) Case No. 11CEPR00028

Atty Panzak, Gordon (for Jeff Dale/Successor Trustee – Petitioner)
Atty Pasto, James H. (of San Diego, for Debbie Duehning, Guardian Ad Litem for George McLain IV, Trust beneficiary)

Status Conference Re: Petition for Instructions
Dept. 303, 9:00 a.m. Monday, January 23, 2012

DOD: 5/21/08		
Cont. from 022811, 041111, 060611, 080111, 100311, 1100711		
	Aff.Sub.Wit.	
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	Objections	
	Video Receipt	
	CI Report	
	9202	
√	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

JEFF DALE, Successor Trustee of the Elaine A. McLain Trust of 1996 ("Trust"), is Petitioner.

Petitioner states:

1. Elaine McLain ("Decedent") created the Trust on 10/26/96 (a copy of the Trust is attached to Petition);
2. The Trust became irrevocable upon Decedent's death in May 2008;
3. Michele Dale and George McLain IV, named successor trustees, are both incompetent within the meaning of the Trust's disqualification clauses (see Trust – p. 14; paragraph 9);
4. Petitioner succeeded both George McLain IV and Michelle Dale as sole successor trustee;
5. The principal place of Trust administration is Fresno County;
6. During the co-trusteeship of Michele Dale and George McLain IV, Decedent directed that 2 parcels of Trust real property be sold, and both co-trustees participated in the sales;
7. A substantial portion of the proceeds of the 2 sales were consumed in the day-to-day care of Decedent;
8. The remaining portion of the funds were placed in an investment account which primarily held stocks and securities traded on the New York Stock Exchange;
9. Title to the investment accounts were in the name of Elaine McLain and Michele Dale as joint tenants; no reference was made to trustee or fiduciary interests in the ownership documents;
10. The Trust (p. 10, paragraph 5, sub M), allows title to remain in the Trust even though the title documents do not disclose the trusteeship or fiduciary obligation of the account holder;
11. In the fall of 2008, the Stock Market collapsed and the security accounts plummeted to ½ of their value and were trending even lower;
12. The Conservator of the Estate for Michele Dale obtained an emergency court order, allowing funds to be withdrawn from the investment account before further loss could occur, which resulted in saving approximately $214,00.00;
13. Due to ambiguity of the Trust's wording at P.10, paragraph 5, sub M, on the advice of counsel, the money was split into 2 segregated accounts: one account for the benefit of Michele Dale, Conservatee, and the other for the benefit of George McLain IV;

--see attached page--

NEEDS/PROBLEMS/COMMENTS:

<u>Continued from 11/7/11. Minute Order states:</u> Mr. Panzak requests the case be continued. If counsel needs the court's assistance, the court is amenable to a conference call with both attorneys.

Reviewed by: NRN
Reviewed on: 1/13/12
Updates:
Recommendation:
File 3A - Mclain

Cont'd:

14. In September 2009, Conservator of Michele Dale petitioned this Court for instructions to distribute the segregated accounts to the Trust;
15. This Court declined to issue instructions, believing insufficient facts were before the Court to justify the instructions;
16. The Michele Dale Conservatorship's principal place of management is in Fresno County;
17. Pursuant to P.10, paragraph 5, subs. K and Q, the successor trustee is entitled to retain counsel and commence any necessary litigation on behalf of the Trust.

Argument:

a. Petitioner believes the proceeds in the 2 segregated accounts are attributable and traceable to the co-trustees' sales of the 2 parcels of real property, and that the accounts are therefore property of the Trust;
b. It is reasonable and necessary to file an action again the Conservatorship Estate of Michele Dale in order to regain control of the accounts and in order to close the Trust, pay debts and taxes, and distribute the remainder to the beneficiaries.

Petitioner requests an Order:

1. That good cause exists for the issuance of the instructions;
2. That successor trustee (Petitioner) be authorized to commence the litigation again the conservatorship to pay all necessary and reasonable costs involved from Trust assets;
3. That Petitioner be authorized to retain counsel as he deems appropriate and pay an initial retainer not to exceed $10,000.00 and pay an hourly rate not to exceed $300.00 per hour;
4. That Petitioner be authorized to enter into other such compensation agreements including making a contingency fee payment agreement not to exceed $25,000.00 in addition to or alternative to the compensation mentioned with respect to counsel fees above.

Supplement to Successor Trustee's Petition for Instructions, filed 4/4/11 by Petitioner Jeff Dale, states:

- The matter was initially heard on 2/28/11 in Dept. 303, Fresno Superior Court;
- Upon agreement of the parties present and upon suggestion of the Court, Petitioner agreed to modify the Prayer of his Petition for Instructions as follows:
    - Upon application of the Successor Trustee to the Trust, Petitioner prays for a Court order as follows:
        - That good cause appears for the issuance of the Instructions.
        - That Jeff Dale, as Conservator of the Estate of Michele Dale, Conservatee, be ordered to pay the Trust the sum of $107,000.00, now being held by the Conservatorship of Michele Dale;
        - That Jeff Dale, as Conservator of the Estate of Michele Dale, Conservatee, be ordered to execute any and all documents necessary to facilitate such transfer of funds.

3B In Re the Trust of Elaine A Mclain (Trust) Case No. 11CEPR00028

Atty Panzak, Gordon (for Jeff Dale/Successor Trustee – Petitioner)
Atty Pasto, James H. (of San Diego, for Debbie Duehning, Guardian Ad Litem for George McLain IV, Trust beneficiary)

Status Conference Re: Petition for Order Compelling Trustee to Make Distribution to Trust Beneficiary; For Imposition of a Constructive Trust; and for an Accounting [Prob. C. § 17200, et seq.]

DOD: 5/26/08		
Cont. from 060611, 080111, 100311, 110711		
	Aff.Sub.Wit.	
√	Verified	
	Inventory	
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	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	X
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

GEORGE MCLAIN IV, by and through his Guardian Ad Litem, DEBBIE DUEHNING, is Petitioner ("Petitioner").

Petition states:

- Decedent died on or about 5/26/08, a resident of San Diego County;
- The Trust at issue is The Elaine A. McLain Trust of 1996 ("Trust"); administration of said Trust is in Fresno County;
- Respondent Jeffrey Dale ("Respondent"), Conservator of the Person and Estate of Michelle Lloydel Dale; is also the sole successor Trustee of the Trust;
- Petitioner George McLain IV is a beneficiary of theTrust;
- At the time of its creation, the Trust owned 1) real property known as 528 Dawson, Morro Bay, California 2) 1095 Allesandro, Morro Bay, California and 3) money invested in the Franklin California Tax Free Income Fund, Inc., Acct. No. 1120-1121500;
- Prior to Decedent's death, the two real properties were sold by Respondent and deposited into bank accounts held in Michele Lloyd Dale's name, as was the Franklin California Tax Free account;
- As such, the Trust's property is money held in an account or accounts in Michele Lloydel Dale's name, in such sum(s) more particularly within Respondent's knowledge;
- Petitioner believes some or all of the funds may have been transferred back to the Trust and Petitioner is unaware of the precise ownership of those funds;
- However, Petitioner further alleges that if any transfer was made from the Trust to Michele Lloydel Dale and Decedent with right of survivorship, such transfer was made when Trustor (Decedent) lacked capacity to understand the nature and effect of said transfer.
- Decedent did not intend to remove the funds from the Trust corpus, and did not intend for all of the unused portion of the Trust to go solely to Michele Lloydel Dale, to the exclusion of Decedent's son, Petitioner George Mclain IV;
- Petitioner is a Trust beneficiary with ½ interest in the Trust;
- Michele Lloydel Dale is the only other Trust beneficiary;
- Per Trust terms, upon Decedent Trustor's death, the Trust terminates and is to be distributed to Decedent's children, Petitioner and Michele L. Mclain Dale, equally.
- Despite Petitioner's repeated demands, Respondent Jeffrey Dale has refused to distribute that portion of the Trust to Petitioner;
- On 5/28/10, Petitioner's attorney (Mr. Pasto) delivered a written request to Respondent for an account of Trust activities and status of the Trust corpus (copy of letter attached to Petition);
- Respondent Trustee has failed to provide any account whatsoever;
- Petitioner believes compensation in a reasonable sum determined by the Court should be awarded as attorney's fees for his attorney in this matter, and that said amount should be charged to Respondent's account or as a Trust expense and paid to Attorney Pasto.

SEE ATTACHED PAGE

NEEDS/PROBLEMS/COMMENTS:

Continued from 11/7/11. Minute Order states: Mr. Panzak requests the case be continued. If counsel needs the court's assistance, the court is amenable to a conference call with both attorneys.

1. Need Order.

Note: per this Court's order dated 6/6/11, the Court ordered Jeff Dale, as Conservator of the estate of Michele Dale, to transfer $107,000.00 from the conservatorship to the Trust. No distributions are to be made without further court order.

NOTE: Page 3D is a Motion to Amend this Petition

Reviewed by: NRN

Reviewed on: 1/13/12

Updates:

Recommendation:

File 3B - Mclain

Cont'd:

Request for Imposition of Constructive Trust

- At all times a confidential relationship (Sole Trustee and Trust beneficiary) existed between Petitioner and Respondent;
- Respondent was aware or had reason to believe that Petitioner was suffering from a form of dementia and unable to understand the location and nature of his (Petitioner's) assets, and also unable to give informed consent to any of Respondent Trustee's actions in connection with Respondent's administration of the Trust;
- Respondent transferred title to the property that should have been distributed to Petitioner to account(s) in the name of Michele Doyle and without Petitioner's consent, at a loss to Petitioner in a sum as may be shown according to proof;
- Respondent has failed to distribute the funds to which Petitioner is entitled as Respondent Jeffery Dale, as Conservator of Michele Dale's estate wishes to maintain in other court and administrative proceedings the fiction that the Trust assets are property of the Trust and that Michele Dale does not have ownership or control of those funds;
- By virtue of Respondent's wrongful acts and the violation of the relationship of trust and confidence then existing between them, Respondent, as Trustee of the Trust and as Conservator of Michele Dale, holds title to Petitioner's one-half share of the Trust assets, as a constructive trustee for Petitioner's benefit.

Request for an Accounting

- Respondent owed Petitioner a duty to keep Petitioner reasonably informed of the Trust and its administration, and to account to Petitioner as a Trust beneficiary for Trust activities;
- Petitioner has repeatedly requested, both orally and in writing, that Respondent Jeffrey Dale, as Trustee of the Trust, provide an account of the Trust's activities and required by the California Probate Code;
- Respondent has breached his fiduciary duties owed to Petitioner.

Petitioner requests:

- **The court find that Michele Dale holds Petitioner's interest in the aforementioned bank accounts in her name in constructive trust for the benefit of Petitioner;**
- **The court order Respondent Jeffrey Dale, Trustee, to distribute to Petitioner his portion of the Trust;**
- **The court require Respondent Jeffrey Dale to account for all Trust assets and activities to Petitioner;**
- **The court order Petitioner's attorney's fee in a reasonable sum to be paid to Petitioner's attorney directly from the Trust Estate, to be charged to Michele Dale or to the Trust estate;**
- **Costs of this proceeding be ordered paid by the Estate in proportions determined by the Court;**
- **Such other and further relief the Court deems just and proper.**

SEE ATTACHED PAGE **3B**

Cont'd:

Respondent's Answer to Petitioner's Petition for Order Compelling Trustee, filed 6/2/11, states:

- Respondent denies most allegations of Petitioner's Petition based on insufficient knowledge of facts alleged;
- Upon the creation of the Trust and thereafter, Petitioner Jeff Dale and Michele Dale were acting as co-trustees of the Trust;
- Between 3/19/6 and 7/2007, Petitioner and Michele Dale executed the duties of co-trustees; during this time period and at the direction of Decedent, Petitioner and Michele Dale, acting as co-trustees, sold the 528 Dawson and 1095 Allesandro properties; during this same time period, proceeds from the property sales were place into interest-bearing accounts at the direction of Decedent; said accounts were in Decedent and Michele Dales' names (and not in the name "Elaine A. McLain Trust of 1996;" both co-trustees agreed to and participated in all sales and transfers of the funds to those accounts;
- Between 3/19/96 and 5/26/08, most, if not all of the sales proceeds were consumed in the care of Decedent until her death; both co-trustees agreed and participated in the payments;
- Upon Decedent's death, any residual funds in the accounts went to Michele under the survivorship provision of the accounts (said accounts having been created in that manner with the participation and agreement of Decedent and co-trustees Jeff Dale and Michele);
- Upon the incapacities of Petitioner George McLain and Michele Dale in July 2007, Jeff Dale became sole successor Trustee and the principal place of administration of the Trust became 1408 H Street in Fresno;
- The status of the Franklin Fund Account was concealed from Trustee by Petitioner and his Guardian Ad Litem acting in concert with one another, and was only recently discovered;
- Trustee has contacted Franklin Funds and is in the process of bringing these funds into the Trust;
- Petitioner's Guardian Ad Litem is the former wife of George McLain IV, and has him locked in her home and is taking the proceeds from his Veterans Benefit Checks by the artifice of a very questionable Power of Attorney;
- Petitioner's Petition is in furtherance of the Guardian Ad Litem's fraudulent intent to defraud the Trust and George McLain IV.
- Respondent alleges various affirmative defenses, based upon the following assertions:
    - Petitioner as a beneficiary lacks standing with respect to assets in a revocable Trust and where the assets were removed and revoked by Trustor no later than 2003;
    - The property sales and transfer of the proceeds to the aforementioned accounts occurred no later than 2003 and were done with the knowledge and participation of Petitioner George McLain IV;
    - Petitioner's Petition is file against Jeff Dale in a personal capacity and not in the capacity of Trustee.
- **Respondent requests the Petition by denied, costs be awarded to Respondent, and for any other relief or order that the Court deems appropriate.**

3C In Re the Trust of Elaine A Mclain (Trust) Case No. 11CEPR00028

Atty Panzak, Gordon (for Jeff Dale/Successor Trustee – Petitioner)
Atty Pasto, James H. (of San Diego, for Debbie Duehning, Guardian Ad Litem for George McLain IV, Trust beneficiary)

Petition to Review Reasonableness of Trustees Compensation, Reasonableness of Attorney's Fees and Costs, for an Accounting and for Removal of Trustee (Prob. C. 17200, et seq.)

DOD: 5/26/08

Cont. from 101111, 110711

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

GEORGE MCLAIN, IV, through his Guardian ad Litem, **DEBBIE DUEHNING**, is Petitioner.

Petitioner states:

- Respondent, Jeffrey Dale ("Jeff Dale"), is Conservator of the person and estate of Michele Lloydel Dale ("Michele") in Fresno County Case No. 07CEPR01207;
- The Trust that is the subject of this action was created pursuant to a written Declaration of trust of Elaine A. McLain dated 3/19/96 and entitled "The Elaine A. McLain Trust of 1996," ("Trust"), and upon Elaine McLain's ("Decedent") death on 5/2/08, became irrevocable;
- Jeffrey Dale, resident of Fresno, is, after the incapacity George McLain IV, the sole successor trustee;
- George McLain IV is a Trust beneficiary, entitled to ½ of the estate (as is Michele), and he brings the instant petition pursuant to §17200(b)(50, (b)(7)(B), (b)(7)(C), (b)(10), and (b)(12);
- At its creation, the Trust was the owner of two real properties located in Morro Bay, CA, as well as money invested in the Franklin California Tax Free Income Fund, Inc.;
- Prior to Decedent's death, the two Morro Bay properties were sold by the Trustee and the proceeds were deposited into bank accounts held in Michele's name– as were the liquidated proceeds from the Franklin California Tax Free Income Fund account;
- Petitioner believes that some or all of the funds held in Michele's name may have been transferred back to the Trust, however, Petitioner is unaware of the precise ownership of these funds; however, if any of the funds were transferred from the Trust to Michele and Decedent with right of survivorship, said transfer was made when Decedent lacked capacity to understand the nature and effect of the transfer; Petitioner alleges that Decedent did not intend to remove funds from the Trust corpus, nor did she intend for the unused portion of the Trust to go solely to Michele, to the exclusion of her son, Petitioner George McLain;

Respondent Trustee's Request for Compensation and Attorneys' Fees and Costs

- The Trust does not specify the trustee's compensation;
- On 7/29/11, Jeff Dale, as Trustee, served on Petitioner a First Account of Trust assets; the account requests $14,400.00 as trustee compensation and $19,500.00 for attorneys' fees and costs advanced;

SEE ATTACHED PAGE

NEEDS/PROBLEMS/COMMENTS:

Continued from 11/7/11.
Minute Order states: Mr. Panzak requests the case be continued. If counsel needs the court's assistance, the court is amenable to a conference call with both attorneys.

Reviewed by: NRN
Reviewed on: 1/13/12
Updates:
Recommendation:
File 3C - Mclain

Cont'd:

- Said amounts are unreasonably high and unfounded because:
  - The main asset listed, a sum of $109,451.02 on deposit with Bank of the West, was not deposited into the Trust account until April 2011 (and was, prior to this time, held in Michele's conservatorship estate); as Conservator of Michele's estate therefore, presumably Jeff Dale was entitled to and did receive compensation as Conservator in that proceeding – prior to that April 2011 deposit;
  - Further, the First Account lists two other "possible" assets, as they are either not yet part of the Trust estate or even Trust assets. These are a Franklin Templeton Investment Account in the approximate sum of $21,631.91 and listed in the Account as "Pending transfer to the Trust"), and the other is designated as a "possible Trust asset," which being investigated by the Trustee; once again, there is no explanation as to why the Franklin Templeton Account has not been transferred to the Trust in the over 3-year period since Decedent's death; and again, assuming these funds were part of Michele's conservatorship estate, Jeff Dale was entitled to and presumably did receive compensation for his services as Conservator of the Michele's estate; presumably the "possible Trust asset" has also been held in the name of Michele's conservatorship estate;
- Still, Jeff Dale now seeks compensation in the amount of $14,400.00, and he also does not explain the amount of attorneys' fees and costs in the amount of $19,900.00;
- Petitioner also objects to the First Account in that it does not contain an inventory of the assets at such time as Jeff Dale assumed his duties as sole trustee, nor does the First Account provide detail of his actions taken as the trustee;
- Jeff Dale has breached his fiduciary duty to reasonably inform the Trust beneficiaries of his activities as trustee, as well as account for Trust assets;
- Jeff Dale has further wasted and mismanaged Trust assets to the detriment and loss of the Trust estate by commingling Trust assets with assets belonging to Michele's conservatorship estate – and he has failed to collect and preserve Trust assets in a timely fashion;
- Jeff Dale has further attempted to raid the Trust by requesting unreasonable compensation for activities conducted not for the Trust's benefit, but rather for Michele's conservatorship estate.

Petitioner requests:

1. A Court order compelling Jeff Dale to distribute to Petitioner his ½ portion of the Trust;
2. That the Court remove Jeff Dale as trustee of the Trust and appoint Petitioner as sole trustee;
3. Should the Court be unwilling to appoint Petitioner, that the Court appoint an independent qualified trustee;
4. That Jeff Dale be ordered to deliver all Trust assets in his possession and control to the successor trustee within 60 days after issuance of this Court's order;
5. That Jeff Dale be ordered to file an accounting detailing his acts as trustee, no later than 60 days after the Court's order;
6. That the Court order Petitioner's attorneys' fees in a reasonable sum, to be paid from the Trust estate, to be charged to Michele or the Trust estate;
7. That costs of this proceeding be ordered to be paid by the Trust estate in proportions determined by the Court; and
8. Other such relief as the Court deems proper.

3D In Re the Trust of Elaine A Mclain (Trust) **Case No. 11CEPR00028**

Atty Panzak, Gordon (for Jeff Dale/Successor Trustee – Petitioner)

Atty Pasto, James H. (of San Diego, for Debbie Duehning, Guardian Ad Litem for George McLain IV, Trust beneficiary)

Notice of Motion and Motion to Amend Petition

DOD: 5/26/08		
Cont. from 101111, 110711		
	Aff.Sub.Wit.	
	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	
	Aff.Mail	
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

GEORGE MCLAIN, IV, through his Guardian ad Litem, **DEBBIE DUEHNING**, is Petitioner.

Petition states:

- Amendment to the original Petition is necessary to clarify that Jeffrey Dale is named as a respondent not only as an individual, but also in his capacity as trustee (Jeffrey Dale has refused to respond to discovery thus far, as he Petitioner's original Petition is directed at him as an individual)
- Petitioner should further be permitted to amend his petition to allege additional acts of the trustee which would constitute a breach of his fiduciary duties; Jeffrey Dale has served a First Account of his Trust activities, and, Petitioner believes that such activities (or lack thereof) furnish an additional basis for relief and should be included in the relief requests.
- **Therefore, Petitioner requests** the Court order the First Amended Petition (attached to Petition herein) be filed.

Points and Authorities (regarding amendments of pleadings) included in Petition

NEEDS/PROBLEMS/COMMENTS:

Continued from 11/7/11. Minute Order states: Mr. Panzak requests the case be continued. If counsel needs the court's assistance, the court is amenable to a conference call with both attorneys.

NOTE: This Motion to Amend concerns Petitioner's *Petition for for Order Compelling Trustee to Make Distribution to Trust Beneficiary; For Imposition of a Constructive Trust; and for an Accounting,* filed 4/6/11, and the subject of Page 3A.

Reviewed by: NRN
Reviewed on: 1/13/12
Updates:
Recommendation:
File 3D - Mclain

4 Augustine J Pedemonte Trust (Trust) **Case No. 11CEPR00192**

Atty Matlak, Steven M. (for Petitioner Joseph Pedemonte)

Atty Nina Helgeson, Maria Pedemonte & Autustina Pedemonte, pro per Objectors

Petition to Appoint Successor Trustee

Cont. from 042511, 060611, 072511, 091211, 111411		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
✓	Notice of Hrg	
✓	Aff.Mail	W/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
✓	Objections	
	Video Receipt	
	CI Report	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

JOSEPH PEDEMONTE, income beneficiary, is Petitioner.

Petitioner states during his lifetime he is the sole income beneficiary of the AUGUSTINE J. PEDEMONTE TRUST dated April 13, 1983.

Eugene A. Zanardi was the initial trustee of the Trust. Eugene resigned on 7/31/1995. Named successor trustee, Diane Williams declined to act, thereby creating a vacancy. There are no other trustees named in the Trust instrument.

On 2/22/1996 Petitioner filed a Petition to Appoint Successor Trustee (Fresno Superior Court case no. 554667). As requested in the petition the court appointed Robert Garavello as successor trustee of the trust.

On or about 2/28/11 Robert Garavello signed a Resignation of Trustee, whereby Robert Garavello resigned as Trustee of the trust effective upon the occurrence of the earliest to occur of the following events: (i) the closing of the pending loan in the approximate amount of $300,000 between Pedemonte Properties Inc., and tri-Counties Bank, which loan will be secured by the real property located at 7520 N. Palm Ave., Fresno. (ii) the appointment of a successor trustee of the Trust and related trust known as the Susan Pedemonte Trust, of which Robert Garavelle is currently serving as trustee, or (iii) September 1, 2011.

The Trust requires that a vacancy in the office of trustee be filled. By an instrument in writing, Joseph Pedemonte, the beneficiary of the Trust, has nominated ROBERT S. SWANTON as successor Trustee to fill the vacancy, and said nominee has signed his consent.

The Trust waives bond for the persons named as trustee or any person appointed as trustee in the manner specified in the Trust.

Petitioner prays for an order:

1. Appointing ROBERT S. SWANTON as successor trustee of the Trust, investing with him all the powers vesting in the office of the trustee under the Trust.

Please see additional page for objections.

NEEDS/PROBLEMS/ COMMENTS:

Continued from 11/14/11. Minute order states parties agree to appoint Bruce Bickel as successor trustee. Matter continued to 1/23/12; however, if parties can stipulate to a bond amount and bond is posted, then the matter on 1/23/2012 may be taken off calendar. ***As of 1/12/12 a bond has not been filed.***

For Petitioner:

1. **Probate Code §15602 provides that when an individual who was not named as trustee in the instrument is appointed as trustee, the trustee must be bonded. The court may not excuse the requirement of a bond except under compelling circumstances.**

For Objectors:

1. **There is nothing in the file to indicate the amount the bond should be set at.**

Reviewed by: KT
Reviewed on: 1/12/12
Updates:
Recommendation:
File 4 - Pedemonte

Objections to Petition to Appoint Successor Trustee, filed on 4/18/11 by Nina Helgeson, Maria Pedemonte and Augustina Pedemonte. Objectors state they are the grandchildren of the Trustor and remainder beneficiaries of the Trust. Objectors object to the appointment of the Nominated Successor Trustee (Robert S. Swanton) as the Successor Trustee of the Trust and desire to have someone appointed who will be fair and impartial to all the beneficiaries of the Trust.

Since the Trust only waives bond for the person named in the instrument at Article 6.01, any successor Trustee should be required to post bond in the statutory amount, unless a corporate Trustee or public agency is appointed as trustee of the Trust.

Instead of the Nominated Successor Trustee (Robert S. Swanton), Objectors hereby nominate in the place and stead of the resigning Trustee, either the FRESNO COUNTY PUBLIC GUARDIAN'S OFFICE or EDWIN D. HUFF, CPA of Fresno, California.

Wherefore, Objectors pray for an order of the Court as follows:

1. The appointment of ROBERT S. SWANTON, as Successor Trustee of the Trust be DENIED;
2. The court appoint the FRESNO COUNTY PUBLIC GUARDIAN'S OFFICE as successor Trustee of the Trust or in the alternative, the Court appoint EDWIN D. HUFF, CPA, as the Successor Trustee of the Trust;
3. The Court require that the Successor Trustee so appointed by the Court give bond in the statutory amount, unless appointed Successor Trustee is a corporate Trustee or Public Agency.

Supplemental Objection to Petition to Appoint Successor Trustee filed by Nina Helgeson, Maria Pedemonte and Augustina Pedemonte on 6/3/11 allege that the resigning Trustee was remiss in carrying out his fiduciary duties in the administration of the 1983 Trust in that the 1983 Trust was essentially being administered by the Petitioner rather than the Trustee, in the Petitioner's own interest and not in the interest of the Objectors.

The nominated successor Trustee is already acting Truste of The Augustine J. Pedemonte Trust of 1990 ("1990 Trust"), which is a separate Trust from the above captioned 1983 Trust, but which about Objectors have not information other than being apprised of its existence in the Settlement Agreement. Objectors believe they are also beneficiaries of the 1990 Trust.

Objectors continue to object to the appointed of the Nominated Trustee and herby nominate the Fresno County Public Guardian's Office or Edwin D. Huff, C.P.A. Objectors believe that the nominated successor Trustee no longer wished to act as trustee of the Trusts.

Wherefore, Objectors continue to pray for an order of the Court as follows:

4. The appointment of ROBERT S. SWANTON, as Successor Trustee of the Trust be DENIED;
5. The court appoint the FRESNO COUNTY PUBLIC GUARDIAN'S OFFICE as successor Trustee of the Trust or in the alternative, the Court appoint EDWIN D. HUFF, CPA, as the Successor Trustee of the Trust;
6. The Court require that the Successor Trustee so appointed by the Court give bond in the statutory amount, unless appointed Successor Trustee is a corporate Trustee or Public Agency.

5 Susan Pedemonte Trust (Trust) **Case No. 11CEPR00193**

Atty Matlak, Steven M. (for Petitioner Joseph Pedemonte)

Atty Nina Helgeson, Maria Pedemonte & Autustina Pedemonte pro per Objectors

Petition to Appoint Successor Trustee

Cont. from 042511, 060611, 072511, 091211, 111411		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
✓	Notice of Hrg	
✓	Aff.Mail	W/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
✓	Objections	
	Video Receipt	
	CI Report	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

JOSEPH PEDEMONTE, income beneficiary, is Petitioner.

Petitioner states during his lifetime he is the sole income beneficiary of the SUSAN PEDEMONTE TRUST dated April 13, 1983.

Eugene A. Zanardi was the initial trustee of the Trust. Eugene resigned on 7/31/1995. Named successor trustee, Diane Williams declined to act, thereby creating a vacancy. There are no other trustees named in the Trust instrument.

On 2/22/1996 Petitioner filed a Petition to Appoint Successor Trustee (Fresno Superior Court case no. 554665). As requested in the petition the court appointed Robert Garavello as successor trustee of the trust.

On or about 2/28/11 Robert Garavello signed a Resignation of Trustee, whereby Robert Garavello resigned as Trustee of the trust effective upon the occurrence of the earliest to occur of the following events: (i) the closing of the pending loan in the approximate amount of $300,000 between Pedemonte Properties Inc., and tri-Counties Bank, which loan will be secured by the real property located at 7520 N. Palm Ave., Fresno. (ii) the appointment of a successor trustee of the Trust and related trust known as the Susan Pedemonte Trust, of which Robert Garavelle is currently serving as trustee, or (iii) September 1, 2011.

The Trust requires that a vacancy in the office of trustee be filled. By an instrument in writing, Joseph Pedemonte, the beneficiary of the Trust, has nominated ROBERT S. SWANTON as successor Trustee to fill the vacancy, and said nominee has signed his consent.

The Trust waives bond for the persons named as trustee or any person appointed as trustee in the manner specified in the Trust.

Petitioner prays for an order:

2. Appointing ROBERT S. SWANTON as successor trustee of the Trust, investing with him all the powers vesting in the office of the trustee under the Trust.

Please see additional page for objections.

NEEDS/PROBLEMS/ COMMENTS:

Continued from 11/14/11. Minute order states parties agree to appoint Bruce Bickel as successor trustee. Matter continued to 1/23/12; however, if parties can stipulate to a bond amount and bond is posted, then the matter on 1/23/2012 may be taken off calendar. ***As of 1/12/12 a bond has not been filed.***

For Petitioner:

2. **Probate Code §15602 provides that when an individual who was not named as trustee in the instrument is appointed as trustee, the trustee must be bonded. The court may not excuse the requirement of a bond except under compelling circumstances.**

For Objectors:

2. **There is nothing in the file to indicate the amount the bond should be set at.**

Reviewed by: KT
Reveiwed on: 1/12/12
Updates:
Recommendation:
File 5 - Pedemonte

Objections to Petition to Appoint Successor Trustee, filed on 4/18/11 by Nina Helgeson, Maria Pedemonte and Augustina Pedemonte. Objectors state they are the grandchildren of the Trustor and remainder beneficiaries of the Trust. Objectors object to the appointment of the Nominated Successor Trustee (Robert S. Swanton) as the Successor Trustee of the Trust and desire to have someone appointed who will be fair and impartial to all the beneficiaries of the Trust.

Since the Trust only waives bond for the person named in the instrument at Article 6.01, any successor Trustee should be required to post bond in the statutory amount, unless a corporate Trustee or public agency is appointed as trustee of the Trust.

Instead of the Nominated Successor Trustee (Robert S. Swanton), Objectors hereby nominate in the place and stead of the resigning Trustee, either the FRESNO COUNTY PUBLIC GUARDIAN'S OFFICE or EDWIN D. HUFF, CPA of Fresno, California.

Wherefore, Objectors pray for an order of the Court as follows:

7. The appointment of ROBERT S. SWANTON, as Successor Trustee of the Trust be DENIED;
8. The court appoint the FRESNO COUNTY PUBLIC GUARDIAN'S OFFICE as successor Trustee of the Trust or in the alternative, the Court appoint EDWIN D. HUFF, CPA, as the Successor Trustee of the Trust;
9. The Court require that the Successor Trustee so appointed by the Court give bond in the statutory amount, unless appointed Successor Trustee is a corporate Trustee or Public Agency.

Supplemental Objection to Petition to Appoint Successor Trustee filed by Nina Helgeson, Maria Pedemonte and Augustina Pedemonte on 6/3/11 allege that the resigning Trustee was remiss in carrying out his fiduciary duties in the administration of the 1983 Trust in that the 1983 Trust was essentially being administered by the Petitioner rather than the Trustee, in the Petitioner's own interest and not in the interest of the Objectors.

The nominated successor Trustee is already acting Truste of The Augustine J. Pedemonte Trust of 1990 ("1990 Trust"), which is a separate Trust from the above captioned 1983 Trust, but which about Objectors have not information other than being apprised of its existence in the Settlement Agreement. Objectors believe they are also beneficiaries of the 1990 Trust.

Objectors continue to object to the appointed of the Nominated Trustee and herby nominate the Fresno County Public Guardian's Office or Edwin D. Huff, C.P.A. Objectors believe that the nominated successor Trustee no longer wished to act as trustee of the Trusts.

Wherefore, Objectors continue to pray for an order of the Court as follows:

10. The appointment of ROBERT S. SWANTON, as Successor Trustee of the Trust be DENIED;
11. The court appoint the FRESNO COUNTY PUBLIC GUARDIAN'S OFFICE as successor Trustee of the Trust or in the alternative, the Court appoint EDWIN D. HUFF, CPA, as the Successor Trustee of the Trust;
12. The Court require that the Successor Trustee so appointed by the Court give bond in the statutory amount, unless appointed Successor Trustee is a corporate Trustee or Public Agency.

6 June E. Lewis (Estate) **Case No. 11CEPR00353**

Atty Zumwalt, Robert B (of Hanford for Petitioner/Executor Judith Lynn Ashley)

Petition for Final Distribution and Waiver of Account [Prob. C. §11640]

DOD: 2/13/11		
Cont. from		
	Aff.Sub.Wit.	
✓	Verified	
✓	Inventory	
✓	PTC	
✓	Not.Cred.	
✓	Notice of Hrg	
✓	Aff.Mail	W/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
✓	Letters	6/6/11
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
✓	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
✓	FTB Notice	

JUDITH LYNN ASHLEY, Executor, is petitioner.

Accounting is waived.

I & A	-	**$416,150.20**
POH	-	**$416,150.20**
Executor	-	**waives**
Attorney	-	**waives**

Distribution pursuant to Decedent's Will and Codicil is to:

Judith Lynn Ashely -
Merrill Lynch account with a balance of $412,882.30 and cash in the sum of $3,267.90

NEEDS/PROBLEMS/COMMENTS:

Reviewed by: KT

Reviewed on: 1/12/12

Updates:

Recommendation: SUBMITTED

File 6 - Lewis

Dept. 303, 9:00 a.m. Monday, January 23, 2012

7 Jeanette Davis Revocable Trust, dated 10-27-95 Case No. 11CEPR00618

Atty Knudson, David N.

Approval of Accounting

Age:			**NEEDS/PROBLEMS/COMMENTS:**
DOD:			**OFF CALENDAR**
Cont. from			**Order Approving Settlement and Approving Accounting was filed 1-3-12.**
	Aff.Sub.Wit.		
	Verified		
	Inventory		
	PTC		
	Not.Cred.		
	Notice of Hrg		
	Aff.Mail		
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	Order		
	Aff. Posting		**Reviewed by:** skc
	Status Rpt		**Reviewed on:** 1-12-12
	UCCJEA		**Updates:**
	Citation		**Recommendation:**
	FTB Notice		**File 7 - Davis**

8 Windell Lightle, Jr., Windaisha Lightle and Daveeon Colter (GUARD/P) Case No.11CEPR00843

Atty **Lambert, Arthur (pro per – maternal great-uncle/Petitioner)**

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

Windell, 11
DOB: 3/2/00

Windaisah, 8
DOB: 3/21/03

Daveeon, 4
DOB: 6/26/07

Cont. from 112111

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

TEMPORARY EXPIRES 01/23/12

ARTHUR LAMBERT, maternal great-uncle, is petitioner.

Windell and Windaisha's father: **WINDELL LIGHTLE, SR.** – *declaration of due diligence filed 12/20/11*

Daveeon's father: **KENNETH COLTER** – *declaration of due diligence filed 12/20/11*

Mother: **JACQUELLA ELEY** - *deceased*

Windell & Windaisha's paternal grandparents: UNKNOWN
Daveeon's paternal grandfather: UNKNOWN
Daveeon's paternal grandmother: JOYCE THOMAS – *declaration of due diligence filed 12/20/11*
Maternal grandfather: DENNIS ELEY – *declaration of due diligence filed 12/20/11*
Maternal grandmother: DECEASED

Petitioner states on 8/14/11 the children's mother called him and asked if he could become the guardian of her children in the event she died. Mom died on 8/21/11. The father of the youngest child was incarcerated when he was born and is currently on parole. The youngest child's father has a mental disability and is on SSI and may not be able to take care of the child. The older children have not seen their father for the last 6-7 years. Neither of the fathers has financially supported the children.

Court Investigator Samantha Henson's report was filed 11/10/11

Court Investigator Samantha Henson's report filed - WAITING FOR UPDATED REPORT.

NEEDS/PROBLEMS/COMMENTS:

CONTINUED FROM 11/21/11
Temporary was granted as to Windell & Windaisha only.

As of 01/12/12, the following remains outstanding:

1. **Need *Notice of Hearing*.**
2. **Need proof of personal service of *Notice of Hearing* with a copy of the *Petition* at least 15 days before the hearing or Consent and Waiver of Notice for:**
   - Windell Lightle, Sr. (father of Windell & Windaisha)
   - Kenneth Colter (father of Daveoon)
   Declarations of Due Diligence filed 12/20/11 state that Petitioner has been unable to make contact with either father.
3. **Need proof of service by mail of *Notice of Hearing* with a copy of the *Petition* at least 15 days before the hearing or Consent and Waiver of Notice or Declaration of Due Diligence for:**
   - Paternal grandparents (unknown)
   - Dennis Eley (maternal grandfather)
   Declarations of due diligence filed 12/20/11 state that the Petitioner has been unable to locate contact information for Joyce Thomas (Daveeon's paternal grandmother), and that the maternal grandfather, Dennis Eley, resides out of state and the Petitioner has not had contact with him.

Reviewed by: JF

Reviewed on: 01/12/12

Updates:

Recommendation:

File 8 – Lightle & Colter

10A Esther C. Cenci (Estate) **Case No. 11CEPR00907**

Atty Erlach, Mara M. (for Terese Ann Cenci McGee, daughter – Objector/Competing Petitioner)

Atty Sanoian, Joanne (for Richard Cenci, son – Petitioner)

Atty Sullivan, Robert (for Bruce Bickel, Objector)

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

DOD: 8/31/11		
Cont. from 111411		
	Aff.Sub.Wit.	s/p
√	**Verified**	
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√	**Notice of Hrg**	
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√	**Letters**	
√	**Duties/Supp**	
	Objections	
	Video Receipt	
	CI Report	
	9202	
√	**Order**	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

RICHARD G. CENCI, son and named second alternate executor without bond, is Petitioner. Petitioner declines to act as Executor and nominates **JONALYN CENCI** (daughter of Decedent), who consents to said appointment. *(Note: Jonalyn Cenci is the named third alternate executor; Terese McGee (competing Petitioner) is the first named executor.)*

Will dated – 12/6/07

Full IAEA – o.k.

Residence – Fresno
Publication- Fresno Business Journal

Estimated value of estate

Personal property	$167,000.00
Annual income	.0
Real property	.0
TOTAL	**$167,000.00**

PROBATE REFEREE: RICK SMITH

SEE ATTACHED PAGE

NEEDS/PROBLEMS/COMMENTS:

NOTE: Page 14B is Objector Terese Cenci McGee's competing *Petition for Probate,* which requests that requests the Court issue a ruling that the three holographic instruments are codicils to Esther Cenci's Will.

Reviewed by: NRN
Reviewed on: 1/13/12
Updates:
Recommendation:
File 10A - Cenci

Dept. 303, 9:00 a.m. Monday, January 23, 2012

***Objection of Trustee Bruce Bickel*, filed 11/7/11, states:**

- Bickel is Trustee of the Survivor's Trust; in her Will, Decedent gave all of her estate and property to the Trustee of the Survivor's Trust;
- Trustee does not take position with the appointment of Terese McGee;
- However, Bickel objects to the appointment of Jonalyn because she is incapable of competently administering the estate because of her displayed hostility toward Decedent, the estate, the Survivor's Trust and the assets of the Survivor's Trust;
- Specifically, Jonalyn has repeatedly attempted to hinder Trustee Bickel's attempts to market and sell Decedent's real property (*see Declaration of Bob Wiginton, Realtor, and Supp Decl. of Atty Sullivan in in Support of Motion to Expunge, attached to Objection as Exhs A and B respectively)*;
- Also, Jonalyn has demonstrated a personal and unwarranted animosity towards the Trustee, and has attacked his actions, integrity and morals – demonstrating that her emotions are driving her actions (*see Supp Decl. of Atty Sullivan, Exh. B*);
- Further, <u>Decedent gave instruction to remove Jonalyn from the Survivor's Trust and Will (in Decedent's 8/20/10 Codicil) and did not want to be visited by Jonalyn (Decedent's 9/6/10 Codicil</u>);
- Jonalyn's actions have hindered efforts to preserve the estate and her appointment as Executor would likely do severe and irreparable damage to the estate;
- If the Court determines that neither Jonalyn nor Terese are competent to act as Executor, Trustee Bickel should be appointed as Administrator with Will Annexed;
- As Jonalyn's activities with respect to Decedent's estate would warrant her removal as executor if appointed under PrC §8502, she is incompetent to be appointed under PrC§8402;
- Finally, PrC §8441(b) gives a trustee priority for appointment as personal representative, as someone who take more than 50% of the estate; here, as Trustee of the Survivor's Trust, Trustee Bickel take virtually all of the Estate.

Objector Bickel requests that the Court:

1. Deny Richard Cenci's Petition for Jonalyn's appointment;
2. If appropriate, appoint Trustee Bickel as the personal representative;
3. Award Bickel his costs in this proceeding.

Response of Richard G. Cenci to Objection of Bruce Bickel, filed 11/9/11, states:

- Bickel ineffectively argues that Jonalyn is incompetent to act under PrC §§8402(a)(3) and 8502(b),(d) simply because she disagrees with how Bickel is administering the Survivor's Trust;
- As a beneficiary of the Trust, Bickel owes Jonalyn a fiduciary duty to handle and manage the Survivor's Trust assets in a prudent and reasonable manner, and has the right to question and object to his actions as Trustee;
- Bickel has never spoken to Jonalyn about any need to sell the real property, nor has he ever sought Jonalyn's input into the necessity of that sale, or reasonable alternatives to the sale;
- Petitioner Cenci and Jonalyn are adamantly opposed to the sale, which was communicated to Bickel;
- Attached to Petitioner's Response are two letters *(Exhs. A and B)* from Attorney Sullivan to Petitioner's attorney, threatening legal action against Jonalyn for advising potential "buyers" of the residence that the house was the subject of litigation and that a lis pendens had been filed;
- Petitioner's attorney does not represent Jonalyn and does not know why the letters were sent to her, but the letters are alarming *(see attached letters);*
- Jonalyn has never touched or taken any "hostile position" against Decedent's car or household furniture or furnishings, which are the only assets of the estate probate, and has taken no action that disqualifies her from acting as the personal representative;
- Furthermore, Bickel should not be appointed as administrator, because he will not ensure the Decedent's estate is protected; he has committed harm to the estate by driving the 1931 Packard without authority and without adequate insurance coverage to an appraiser and afterwhich time the car broke down and had to be towed to a repair shop *(See correspondence between Attys Sanoian and Sullivan regarding these incidents, attached as Exhs. C-E);*
    - ***<u>SEE ATTACHED PAGE</u>***

- Bickel takes no stance on Terese's appointment as executor and does not object to Terese's proposed admission of three handwritten documents she purports to be Codicils; Terese is attempting to admit these document as codicils in an attempt to change the distribution of Decedent's estate so that only she and Herman Jr. inherit under the Survivor's Trust; therefore, Bickel would not qualify for appointment under PrC§8441(b), as the Survivor's Trust would receive nothing;

- Bickel gives no reason for the sale of the real property; and allowed over $30,000.00 to be spent by Terese over a 9-month period, after she was removed as trustee of the Survivor's Trust – which resulted in no money for Decedent's care at one point; Bickel's actions were not in the sole interest of Decedent during her life, and are not now in the interest of Petitioner nor Jonalyn as beneficiaries of the Survivor's Trust;

- Bickel has allowed Terese to live rent-free in the real property, drive the Packard around town, and spend over $30,000.00 of Trust assets, and does not object to Terese's Petition for Probate; Bickel is clearly not acting impartially toward all four Trust beneficiaries as required by PrC §16003 (*if a trust has 2 or more beneficiaries, trustee has duty to deal impartially with them and to act impartially in investing and managing the trust property*);

- Bickel has also continued to allow the Trust real property to remain unproductive by not receiving rent on it, in violation of PrC §16607 (*a trustee has a duty to make the trust property productive under the circumstances and in furtherance of the trust)*

  Petitioner requests the Court order:
  1. That Jonalyn Cenci be appointed as Executor;
  2. That Bickel's petition for appointment as administrator be denied in its entirety.

***Objection of Terese McGee to Petition for Richard Cenci's Petition for Probate*, filed 11/9/11, states:**

- Decedent's 2007 Will provides for some specific bequests and poured the residue of the estate into the Survivor's Trust;
- As the nominated executor in the Will, Terese has therefore petitioned for appointment;
- Terese objects to Richard Cenci's Petition to appoint Jonalyn; Decedent's Will does not name Jonalyn as the first choice for executor; rather, Jonalyn is listed third, after Terese and Richard;
- Decedent had numerous opportunities to revise her estate plan since the 2007 Will; she never revised her estate plan to remove Terese as named executor, even though she made other changes as recently as Sept. 2010 (three holographic instruments executed in August and Sept. 2010 are treated as codicils and attached to Terese's Petition for Probate as well as the instant Objection, as *Exh. A*);
- Jonalyn's appointment appears to be directly contrary to Decedent's wishes; the 9/6/10 codicil declares she does not want Jonalyn (referred to by Decedent as "Joan") to visit her, does not want her at her (Decedent's) funeral, and that she wishes to disinherit Jonalyn because she and Richard want control of Decedent's affairs; in the 8/20/10 codicil, Decedent instructs that Jonalyn be removed from her Survivor's Trust and Will;
- Further, at trial on 8/5/11, Decedent testified she was "angry with Jonalyn," and also testified that she did not believe Terese should be punished for lending money to Herman Jr. *(pertinent trial transcript pages attached to Objection as Exh. B);*
- Jonalyn is incompetent to be Decedent's personal representative, as she has demonstrated behavior showing she does not have the estate's best interest, or its beneficiaries at heart, and has displayed a pattern of harassing and threatening behavior toward attorneys, beneficiaries, fiduciaries and their agents and also Bruce Bickel *(copies of e-mails from Jonalyn to Attorney Keeler attached as Exh. C);*
- Appointing Jonalyn would result in a conflict of interest as Richard is petitioning for Jonalyn's appointment, and he is also suing Decedent in a separate trust matter before this Court.

Objector Terese requests the Court:
1. Deny Richard's Petition to appoint Jonalyn as Executor;
2. Appoint Terese as Executor to serve without bond as specified in Decedent's 2007 Will.

10B Esther C. Cenci (Estate) **Case No. 11CEPR00907**

Atty Erlach, Mara M. (for Terese Ann Cenci McGee, daughter – Petitioner)

Atty Sanoian, Joanne (for Richard Cenci, son – Objector/Competing Petitioner)

Petition for Probate of Will and for Letters Testamentary; Authorization to Administer Under the Independent Administration of Estates Act (Prob. C. 8002, 10450)

DOD: 8/31/11		
Cont. from 111411		
	Aff.Sub.Wit.	s/p
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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	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

TERESE ANN CENCI MCGEE, daughter and first named executor without bond, is Petitioner.

Will dated – 12/6/07; and ***Codicils dated 8/20/10, 8/26/10 and 9/6/10***

Full IAEA – ***need***
Residence – Fresno
Publication- ***need***

Estimated value of estate

Personal property	$167,000.00
Annual income	.0
Real property	.0
Total	**$167,000.00**

PROBATE REFEREE: RICK SMITH

***Objection of Richard G. Cenci to Petition*, filed 10/14/11, states:**

- Petitioner McGee is not competent to act as Executor pursuant to PrC 8402(a)(3) because she is currently a defendant in an action for breach of fiduciary duty and for financial abuse of an elder, regarding the same subject matter at issue here *(see Fresno Superior Court Case No. 10CEPR00244);*
- During her 7/13/10 deposition, Petition McGee testified to the following *(pertinent portions of deposition attached to Objection):*
- As trustee of Decedent's Survivor's Trust, Petitioner took out margin loans of $321,000.00 from a Bypass Trust without Decedent's knowledge and without authority to use the Bypass funds;

SEE ATTACHED PAGE

NEEDS/PROBLEMS/COMMENTS:

NOTE: Page 14A is Objector Richard Cenci's competing *Petition for Probate.*

1. **Need affidavit of publication, pursuant to Probate Code 8124.**
2. **Need *Statement of Duties and Liabilities of Personal Representative* (Judicial Council Form DE-121), and *Confidential Supplement to Duties and Liabilities*, containing the birth date and driver's license number of the personal representative, pursuant to Probate Code 8404 and Local Rule 7.10.1.**

Reviewed by: NRN
Reviewed on: 1/13/12
Updates:
Recommendation:
File 10B – Cenci

Dept. 303, 9:00 a.m. Monday, January 23, 2012

- Petitioner gave an unknown amount of Decedent's money to Petitioner's brother, Herman Cenci, that giving large sums of money to Herman was not prudent, and that neither Richard Cenci nor Jonalyn Cenci has ever misappropriated Decedent's money;
- Petitioner handled the sale of real property on Adoline Ave (belonging to Bypass Trust), yet does not know where the sale proceeds went; nor did she know which funds were left in a Charles Schwab account upon which she was writing checks and loaning out money to Herman Cenci;
    - Petitioner admitted to breaching her trustee duties, and her own admissions show she is not competent and is unfit to act as personal representative of Decedent's estate;
- The 3 handwritten codicils Petitioner seeks to admit do not meet the statutory requirements of codicils as they are the product of fraud or undue influence, or duress.
- **Objector requests Petitioner be denied Letters Testamentary and that the codicils not be admitted to probate.**

Supplemental Objection of Richard G. Cenci, filed 11/9/11, states:

- Terese is not competent or qualified to act as executor because she has ignored previous court orders and has mislead the court in her filed income and expense declaration in Fresno Superior Court Case No. 617025-2 : per Supplemental Declaration in Support of Respondent's Application to Terminate Spousal Support, filed by Steven McGee on 4/27/07, Terese ignored 2 previous court orders that she become self-supporting and did not accurately report her assets or receipt of funds in addition to spousal and child support ; the Declaration speaks to Terese's lack of veracity and her history of disrespecting court proceedings*(a Request for Judicial Notice of McGee's Declaration was filed in this case on 11/7/11);*
- Also, on 8/16/10, this Court, in the related Trust litigation matter (Case No. 10CEPR000244), ordered Terese to provide a forensic accounting of both Trusts to Esther Cenci's counsel; Terese never provided the forensic accounting;
- Furthermore, the 3 handwritten codicils should not be admitted to probate because the disposition provisions of the 3 documents lack specific language referencing power of appointment as required by the Cenci Family Trust of 1992 – which specifically states that under the terms of the Survivor's Trust, "on the death of the surviving settlor, the trustee shall distribute the remainder, if any, of the Survivor's Trust to such one or more persons or entities…on such terms or conditions..as the surviving settlor shall appoint by a valid instrument or lifetime document that was executed after the Deceased Settlor's death and specifically refers to this power of appointment." Decedent's 2007 Will confirms this requirement and states she (Decedent) is exercising her power of appointment.
- Because the 3 codicils do not in any way reference Decedent's power of appointment, they cannot be admitted to change the 2007 Will's disposition provisions.

  Objector Richard Cenci requests the Court:
  1. Deny Terese's Petition for Letters Testamentary; and
  2. Not admit the 3 codicils to probate.

10C Esther C. Cenci (Estate) **Case No. 11CEPR00907**

Atty Erlach, Mara M. (for Terese Ann Cenci McGee, daughter – Petitioner)

Atty Sanoian, Joanne (for Richard Cenci, son – Objector)

Atty Sullivan, Robert (for Bruce Bickel)

Petition for Interpretation of Holographic Instruments [Prob. C. §17200(b)(1)]

DOD: 8/31/11		
Cont. from		
	Aff.Sub.Wit.	
√	Verified	
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√	Notice of Hrg	
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	Conf. Screen	
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	Duties/Supp	
√	Objections	
	Video Receipt	
	CI Report	
	9202	
√	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

TERESE ANN CENCI MCGEE, daughter and first named executor without bond, is Petitioner.

Petitioner seeks a ruling from the Court that three holographic instruments are codicils to the 12/6/07 Will of Decedent Esther Cenci ("Will").

Petitioner states:

5. Esther C. Cenci ("Decedent") executed the Will, which provided for specific bequests and poured the residue of her estate over into the Survivor's Trust;
6. Recently, it was discovered that Decedent executed at least 3 holographic instruments in 2010 which could be testamentary in nature;
7. These holographic documents are dated 8/20/10, 8/26/10, and 9/6/10, and all have been lodged with the Court.
8. Petitioner believes these documents are codicils to the Will, but requests clarification from this Court as to the effect of the holographic instruments.

Objection of Richard Cenci, filed 12/6/11, states:

A. The interpretation of holographic instruments is moot because the probate proceeding is no longer necessary. Specifically:

- There are currently no estate assets, as Decedent transferred the 1932 Packard automobile to the Survivor's Trust prior to her death.
- The Trustee of the Survivor's Trust (Bruce Bickel) has told the Court and Objector's attorney that he considers the furniture and furnishings (of Decedent's residence) to be assets of the Survivor's Trust; as such, there is nothing to probate under the Will.
- Furthermore, when previously a personal representative of Decedent's estate was necessary because Decedent was named as a respondent in related litigation involving the Family Trust, Decedent was ultimately dismissed due to her death and therefore a probate proceeding is no longer necessary.

SEE ATTACHED PAGE

NEEDS/PROBLEMS/COMMENTS:

Note: This same Petition has been filed in the related Trust proceeding (10CEPR00244).

1. Need Order.

Reviewed by:	NRN
Reviewed on:	1/18/12
Updates:	
Recommendation:	
File 10C - Cenci	

Dept. 303, 9:00 a.m. Monday, January 23, 2012

CONT'D:

B. The holographic instruments are not codicils to the Will. Specifically:

- The 8/20/10 and 8/26/10 documents appear to be letters to Decedent's attorney with no real intent specifically shown to make the letters "codicils" to the Will.
- The only dispositive provisions concern the distribution of the Packard automobile and household furniture, which are assets no part of the estate.
- There are no nominations in the documents, and the majority of their contents concern Decedent's Survivor's Trust and family issues.
- The 9/6/10 document has no dispositive provisions, nor does it nominate any personal representatives, and there is nothing in the document indicating it is a "codicil," but merely a letter of no consequence addressed to Decedent's attorney.
- Even if the Court were to find that the 8/20/10 and 8/26/10 documents were somehow meant to be "codicils," there are no assets to distribute, such that any interpretation would be fruitless.

C. The holographic instruments cannot change the terms of the Survivor's Trust:

- If the creating instrument requires a specific reference to the power, the power may be exercised only by such specific reference to the power. *Estate of Muriel Eddy* (1982) Cal. App. 3d 292.
- PrC §632 states that if the creating instrument expressly directs that a power of appointment be exercised by an instrument that makes specific reference to the power or instrument that created the power, the power can be exercised only by an instrument containing the required reference.
- Here, the Survivor's Trust specifically requires that that the instrument, in this case, the holographic documents, has to refer to the power of appointment in those documents, which they do not.
- The Cenci Family Trust specifically states that under the terms of the Survivor's Trust, on surviving settlor's death, the trustee shall distribute the remainder of the survivor's trust… to such one or more persons or entities..on such terms or conditions..as the surviving settlor shall appoint by a valid instrument or lifetime document that was executed after deceased settlor's death and specifically refers to this power of appointment. (Article Seventh, Section 7 of the Trust)
- Unlike the 3 handwritten documents at issue here, Decedent's Will confirms this absolute requirement as it references Article Seventh, Section 7 of the Family Trust and specifically states that she (Decedent) is exercising her power of appointment.

D. The holographic instruments do not meet the requirements of Codicil:

- Objector incorporates the Objection to the Petition for Probate of Will and Letters Testamentary filed by Objector on 10/14/11.
- The holographic instruments do not meet the statutory requirements of codicils under applicable probate code sections, as they are the product of fraud, or undue influence, or duress.
- There is a trial in this case scheduled for 1/10/12. The issues herein may be moot after the trial.

Objector prays for an Order that 1) the three handwritten documents are not codicils and 2) that the three handwritten documents do not affect the dispositive provisions of the Survivor's Trust.

11 Edward Dorothy Salazar Living Trust dated 10/11/10 Case No. 11CEPR01049

Atty **Winter, Gary L. (for Rudolfo Diego Salazar – Trustee – Petitioner)**

Petition for Order Confirming Trust Assets; Petition for Instructions [Prob. C. §850 (a)(3); Prob. C. §17200, et seq.]

Edward Dorothy Salazar
DOD: 6-23-11

	Aff.Sub.Wit.	
✔	Verified	
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	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
✔	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

RUDOLFO DIEGO SALAZAR, acting Trustee of the Edward Dorothy Salazar Living Trust dated 10-11-10 (the "2010 Trust"), is Petitioner.

Petitioner states Settlor was a resident of Sacramento County, but the principal place of administration of the trust is Fresno County. Petitioner is acting trustee of the 2010 Trust, and is also the named trustee under a prior trust of Settlor (the "1996 Trust") and named executor of Settlor's 1996 pour-over will (the "1996 Will").

Petitioner states the 1996 Trust and 1996 Will were prepared by an attorney, but that Settlor used an estate planning website to create the 2010 Trust. The 2010 Trust does not specifically revoke the 1996 Trust; however, Petitioner is informed and believes it was Settlor's intent at the time he created the 2010 Trust that any property which was in his possession during his lifetime and after his death be transferred into the 2010 Trust and that the 1996 Trust be revoked. Petitioner states the 1996 Trust includes certain heirs that predeceased the Settlor, and additional heirs.

Petitioner states that shortly before his death, Settlor was in the process of transferring all of his assets into the 2010 Trust; however, Petitioner believes Settlor was personally ignorant of the fact that he needed to have new deeds and account designations created to properly transfer the property to his 2010 Trust, and that Settlor thought that by signing the Transfer and Assignment document, he had properly transferred all of his property into the 2010 Trust.

Petitioner prays for an Order that:

1. Notice of this Petition was given as prescribed by law;
2. The 1996 Trust and 1996 Will are revoked and of no effect;
3. The 2010 Trust is the sole valid dispositive instrument of Edward Dorothy Salazar;
4. The 2010 Trust is the operative trust for administration of the estate of Edward Dorothy Salazar;
5. Certain real property, bank accounts and personal property are subject to the management and control of Petitioner as trustee of the 2010 Trust;
6. Petitioner, as trustee of the 2010 Trust, shall distribute all assets held by the 2010 Trust as Settlor intended in the 2010 Trust; and
7. Any and all assets inadvertently omitted from Annex A of the 2010 Trust or the Transfer and Assignment, now known or unknown and/or acquired after the date of this Petition, are deemed to be included in the 2010 Trust and distributed according to its terms.

NEEDS/PROBLEMS/COMMENTS:

1. **In addition to the assets specifically referenced in "Annex A" of the 2010 Trust, Petitioner requests the order include unspecified assets "inadvertently omitted" or "now known or unknown and/or acquired after the date of this Petition."**

   <u>The Court cannot confirm unspecified assets not included in the trust schedule. Such assets may be subject to probate estate administration</u>.

   Examiner notes that if the Court orders that the 1996 documents are revoked as requested, and there are assets later discovered that cannot be confirmed to the 2010 Trust per above, such assets may be subject to <u>intestate</u> probate estate administration.

   Examiner notes alternatively that if the 1996 documents are not revoked by the Court, it appears that such potential estate could be administered as testate, but would have a slightly different heir structure than the 2010 Trust.

Reviewed by: skc
Reviewed on: 1-12-12
Updates:
Recommendation:
File 11 - Salazar

12 Gerald V Mon Pere Irrevocable Trust, 1-14-92 Case No. 11CEPR01050

Atty Matlak, Steven M. (for Petitioner Paul Mon Pere)

Petition for Order Approving Modification of Trust Terms Under Probate Code 15404(b), 15409 and 17200(b)(13)

Cont. from		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
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✓	Notice of Hrg	
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	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	X
	Aff. Posting	
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	UCCJEA	
	Citation	
	FTB Notice	

PAUL MON PERE, beneficiary, is petitioner.

Petitioner states the Trust was established by Petitioner's father Gerald V. Mon Pere on 1/14/1992. The Irrevocable Trust is a life insurance trust which will be funded by a life insurance policy on the life of the Settlor upon the Settlor's death.

The Irrevocable Trust provides that upon the termination of the Trust, the Trustee shall divide into as many equal shares as there are Settlor's living children and deceased children leaving issue.

Petitioner seeks an order authorizing the modification of the Irrevocable Trust so that any share passing to the Settlor's son, Philip Mon Pere will be held in a third party special needs trust.

Petitioner states Philip suffers from severe depression and bipolar disorder and as a result receives SSI and Medi-Cal.

Upon the Settlor's death Philip would lose his SSI and Medi-Cal benefits unless the assets were directed into a third party special needs trust (SNT). A third party SNT is an SNT established with assets of someone other than the government benefits recipient and is subject to different requirements from a first party SNT, which is an SNT funded with the recipient's own money.

Petitioner states the Settlor intended that the Irrevocable Trust preserve assets for Philip's benefit throughout his life. When the Trust was created Philip did not have a disability, and the Settlor could not have predicted the need for an SNT. Had Philip's disability been a present at the time of creating the Irrevocable Trust, the Settlor could have learned that the Irrevocable Trust would have jeopardized Philip's benefits.

Please see additional page

NEEDS/PROBLEMS/COMMENTS:

1. **Need Order**

Reviewed by: KT

Reviewed on: 1/13/12

Updates:

Recommendation:

File 12 – Mon Pere

Dept. 303, 9:00 a.m. Monday, January 23, 2012

Petitioner wishes to modify the distribution portion of the Irrevocable Trust so that it will not disqualify Philip form his needs-based public benefits.

Petitioner requests modification of the Trust after the sentence in Paragraph C of ARTICLE THIRD which reads, "Each share so apportioned shall be distributed outright and free of Trust to any child of the Settlor who is then living," the requested modification would insert the following sentence: "PROVIDED, HOWEVER, if PHILIP MON PERE ("PHILIP") is then living, the trustee shall allocate PHILIP'S share to a special needs trust (hereinafter, "Special Needs Trust") for the benefit of PHILIP, which Special Needs Trust shall be retained, administered and distributed as provided in paragraph E. of this ARTICLE THIRD." The requested modification would also add a new paragraph E to ARTICLE THIRD, detailing the terms of the Special Needs Trust. [*The terms of the trust have been provided in the petition.*]

Wherefore, Petitioner prays for and Order of this Court:

1. Finding that all notices have been given according to law;

2. Approving the modification of the Irrevocable Trust as requested in the Petition.

Declaration of Settlor Gerald V. Mon Pere in Support of Petition is attached to the Petition.

13 Josephine Ellen Reis aka Josephine Reis (Estate) Case No. 11CEPR01051
Atty Downing, Marcella (for Jimmie Dale Reis – son/Petitioner)

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

DOD: 09/27/07		
Cont. from		
	Aff.Sub.Wit.	X
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
✓	Notice of Hrg	
✓	Aff.Mail	
	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	

JIMMIE DALE REIS, son, is Petitioner, and requests appointment as Administrator with Will Annexed without bond.

Full IAEA – **NEED**

Will dated 12/10/77

Residence: Laton
Publication: **NEED**

Estimated Value of the Estate: $0.00

Probate Referee: **STEVEN DIEBERT**

NEEDS/PROBLEMS/COMMENTS:

1. **Need Affidavit of Publication.**
2. **Will is not self-proving. Need Affidavit of Subscribing Witness.**
3. **Item 8 of the Petition does not state each party's relationship to the decedent.**
4. **The Petition states that the decedent had a deceased spouse, Henry F. Reis, Sr., however Mr. Reis' name is listed in item 8 of the Petition with an address in Laton. Need clarification.**
5. **If the decedent's spouse, Henry Reis, Sr. is deceased, his name and date of death should be listed in item 8 of the Petition pursuant to Local Rule 7.1.1D.**
6. **Petitioner is requesting to be appointed as Administrator with Will annexed without bond, stating that the Will waives bond. However, the Will only waives the requirement of bond to the individuals named as Executor or alternate Executors in the Will. Need waivers of bond from all beneficiaries.**
7. **The Petition states that the value of the estate is $0.00. Pursuant to Probate Code § 8002(a)(4) the Petition is to state the character and estimated value of the property in the estate. Need clarification.**

Reviewed by: JF
Reviewed on: 01/12/12
Updates:
Recommendation:
File 13 - Reis

14 Gary Norris aka Gary Phillip Norris aka Gary P. Norris (Estate)

Case No. 11CEPR01081

Atty **Bagdasarian, Gary G. (for Mace Norris – son/Petitioner)**

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

DOD: 10/09/11			**MACE NORRIS,** son and named Executor without bond, is Petitioner.
			Full IAEA – OK
Cont. from			
✓	**Aff.Sub.Wit.**		Will dated 08/26/11
✓	**Verified**		
	Inventory		Residence: Fresno
	PTC		Publication: The Business Journal
	Not.Cred.		
✓	**Notice of Hrg**		**<u>Estimated Value of the Estate:</u>**
✓	**Aff.Mail**	w/	Personal property - $ 20,000.00
✓	**Aff.Pub.**		<u>Real property - 423,000.00</u>
	Sp.Ntc.		**Total - $443,000.00**
	Pers.Serv.		Probate Referee: **RICK SMITH**
	Conf. Screen		
✓	**Letters**		
✓	**Duties/Supp**		
	Objections		
	Video Receipt		
	CI Report		
	9202		
✓	**Order**		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		

NEEDS/PROBLEMS/COMMENTS:
Reviewed by: JF
Reviewed on: 01/13/12
Updates: 01/18/12
Recommendation: SUBMITTED
File 14 - Norris

Dept. 303, 9:00 a.m. Monday, January 23, 2012

15 **Myra A. Fillion (Estate)** **Case No. 10CEPR00889**

Atty **Fillion, Paul A. (pro per Executor)**

Probate Status Hearing Re: Filing of First Account or Petition for Final Distribution (Prob. C. §12200, et seq.)

DOD: 8/31/2010	**PAUL A. FILLION** was appointed as Executor of the Estate with full IAEA Authority and without bond on 11/15/10.	**NEEDS/PROBLEMS/COMMENTS:** 1. **Need current status report, first account or petition for final distribution.**
Cont. from		
Aff.Sub.Wit.	Corrected I & A filed on 9/23/11 showing the estate value as $125,000.00	**<u>Note:</u> Paul A. Fillion was formerly represented by Attorney John Barrus. Mr. Barrus filed a substitution of attorney on 9/22/11.**
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg	First account or petition for final distribution was due 11/15/11.	
Aff.Mail		
Aff.Pub.	This status hearing was set for the filing of the first account or petition for final distribution.	
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters	A copy of the Notice of Status Hearing was mailed to Paul A. Fillion on 9/26/11.	
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		**Reviewed by: KT**
Status Rpt		**Reviewed on: 1/12/12**
UCCJEA		**Updates:**
Citation		**Recommendation:**
FTB Notice		**File 15 - Fillion**

Dept. 303, 9:00 a.m. Monday, January 23, 2012

16 **Samantha Shreffler (GUARD/P)** **Case No. 06CEPR00821**

Atty **Shreffler, Irene L. (pro per Guardian/maternal grandmother)**

Status Hearing Re: Proof of Guardianshp in Arizona and Termination of the California Guardianship

Age: 15 years **DOB: 1/18/1997**	**IRENE SHREFFLER**, maternal grandmother/guardian, petitioned the court to fix the residence outside of California to Kingman, Arizona. Irene Shreffler was appointed guardian of the person on 9/20/06. Father: **GEORGE PLESH** Mother: **DENISE LEMEN** On 7/25/11 the Court granted the petition to move the minor to Arizona ordered that a guardianship or its equivalent would be commenced in Arizona within four months of the order.	**NEEDS/PROBLEMS/COMMENTS:** 1. **Need status of guardianship proceedings in Arizona.**
		Reviewed by: KT
		Reviewed on: 1/12/12
		Updates:
		Recommendation:
		File 16 - Shreffler

Cont. from

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

Dept. 303, 9:00 a.m. Monday, January 23, 2012

17 Cesar Gonzalez & Marco Hernandez (GUARD/P) Case No. 09CEPR00574

Atty Ministro, Concepcion Hernandez (Pro Per Petitioner, mother)
Atty Sanchez, Isidoro (pro per/non-relative – current guardian)
Atty Sanchez, Elizabeth (pro per/non-relative – current guardian)

Petition for Termination of Guardianship

Cesar Gonzalez
Age: 8 years
DOB: 11/22/2003

Marco Hernandez
Age: 10 years
DOB: 11/30/01

Cont. from 101711, 111411

	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	X
	9202	
√	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

CONCEPCION HERNANDEZ MINISTRO, Mother, is Petitioner.

Isidoro Sanchez and Elizabeth Sanchez, non-relative family friends, are the current guardians. They were appointed guardians of the minor Cesar Gonzalez on 9/28/09, and were appointed guardians of the minor Marco Hernandez on 3/22/10. **Cesar and Marco are brothers.**

Guardians were sent notice by mail on 10/5/2011.

Father: **OCTAVIO LAZARO GONZALEZ ARANA**; *sent notice by mail 10/5/2011*

Paternal grandfather: Alvaro Gonzalez Fentunez, *deceased*
Paternal grandmother: Maria Ocotlan Arana Luna; *sent notice by mail 10/5/2011;*
Maternal grandfather: Alvaro Hernandez Garcia; *sent notice by mail 10/5/2011;*
Maternal grandmother: Maria Gonzalez Ministro; *sent notice by mail 10/5/2011;*

Petition states the guardianship should be terminated in order to reunite the family once again.

Court Investigator Julie Negrete's report, filed 10/17/11

.

L.A. County Court Investigator Robert Nigro's report, filed 11/9/11.

Julie Negrete's report, filed 11/10/11.

*****NEED L.A. County Court Investigator Report re: Cesar***

NEEDS/PROBLEMS/COMMENTS:

Continued from 11/14/11. Minute Order states: Petition is approved as to Marco Hernandez only. The matter is continued as to Cesar Gonzalez only. Per Petitioner, Marco is in Pennsylvania. The court has not received a report from Los Angeles, CA re: Cesar.

Reviewed by: NRN
Reviewed on: 1/13/12
Updates:
Recommendation:
File 17 – Gonzalez & Hernandez

18 Aaliyah Morales, Talaya Young, Edward Young, Jr. & Kaziyah Lewis (GUARD/P) Case No. 10CEPR00525

Atty **Gutierrez, Mary Ann (pro per Petitioner/family friend)**

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

Aaliyah age: 9 years DOB: 1/23/2003		
Talaya age: 5 years DOB: 6/9/2006		
Edward age: 3 years DOB: 2/13/2008		
Kaziyah age: 1 year DOB: 8/15/10		
Cont. from		
	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	X
	9202	
✓	**Order**	
	Aff. Posting	
	Status Rpt	
✓	**UCCJEA**	
	Citation	
	FTB Notice	

THERE IS NO TEMPORARY.
No Temporary was requested.

MARY ANN GUTIERREZ, family friend, is petitioner.

Aaliyah's father: **CIRO MORALES** - *Declaration of due diligence filed on 11/28/11.*
Talaya and Edward's father: **EDWARD YOUNG**
Kaziyah's father: **UNKNOWN** – *Declaration of due diligence filed on 11/14/11.*

Mother: **FELICIA YOLANDA LUNA** – *Consents and waives notice.*

Aaliyah's paternal grandparents – unknown
Talaya and Edwards' paternal grandparents – unknown
Kaziyah's paternal grandparents – unknown – *Declaration of due diligence filed on 11/28/11.*
Maternal grandfather : Deceased
Maternal grandmother: Josie Alvarez – *consents and waives notice.*

Petitioner states custodial parent is unable to provide housing for the children.

NEEDS/PROBLEMS/COMMENTS:

<u>Note:</u> Declaration filed by Petitioner on 11/29/11 states mother has decided to keep Talaya and Edward with her. It is unclear if the Petitioner is intending to amend her petition to only include minors Aaliyah and Kaziyah. *File includes two orders one for all four minors and one for Aaliyah and Kaziyah only.*

1. **Need *Notice of Hearing.***
2. **Need proof of personal service of the *Notice of Hearing* along with a copy of the *Petitioner* or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on:**
   a. **Ciro Morales (Aaliyah's father) –** *unless the court dispenses with notice. (Note: Petition states father is incarcerated in Arizona for life).*
   b. **Edward Young (Talaya and Edward's father)**
   c. **Unknown father of Kaziyah** *–unless the court dispenses with notice.*
3. **Need proof of service of the *Notice of Hearing* along with a copy of the *Petitioner* or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on:**
   a. **Aaliyah's paternal grandparents**
   b. **Talaya and Edward's paternal grandparents**
   c. **Kaziyah's paternal grandparents –** *unless the court dispenses with notice.*

Court Investigator Samantha Henson to provide:

1. **Court Investigator's Report**
2. **Clearances**

Reviewed by: KT
Reviewed on: 1/12/12
Updates:
Recommendation:
File 18 – Morales, Young & Lewis

19 Joshua Ryan Steele (GUARD/PE) **Case No. 11CEPR01037**

Atty Rummelt-Sandrik, Stacie (pro per Petitioner/maternal aunt)

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

Age: 2 years		
DOB: 11/11/09		
Cont. from		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	X
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
✓	Conf. Screen	
✓	Letters	
✓	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	X
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
✓	UCCJEA	
	Citation	
	FTB Notice	

TEMPORARY EXPIRES 1/23/2012

STACIE RUMMELT-SANDRIK, maternal aunt, is Petitioner.

Estimated value of the Estate: Unknown

Father: **JEREMY STEELE –** *consents and waives notice.*

Mother: **AMANDA STEELE –** *consents and waives notice.*

Paternal grandfather: Edward Steele
Paternal grandmother: Shannon Steele– *consents and waives notice.*
Maternal grandfather: John Emberton– *consents and waives notice.*
Maternal grandmother: Cindy Samath– *consents and waives notice.*

Petitioner states that Joshua has special needs and his parents are not able to care for him and also care for their other children. Petitioner states that Joshua has lived with her since April 2011 and that his parents and grandparents agree with the arrangement. Petitioner states that she intends to get Joshua all available assistance that will allow him to develop to the highest mental and physical level possible.

NEEDS/PROBLEMS/COMMENTS:

1. **Petition also request that petitioner be appointed as guardian of the estate. The estimated value of the estate is unknown. Petition does not state why guardianship of the estate is necessary. Petitioner does not need a guardianship of the estate to be able to access public benefits.**

2. **Need *Notice of Hearing.***

3. **Need proof of service of the *Notice of Hearing* or *consent and waiver of notice* or *declaration of due diligence* on:**
   a. **Edward Steele (paternal grandfather)**

Court Investigator Jennifer Daniel to provide:

1. **Court Investigator's Report**
2. **Clearances**

Reviewed by: KT
Reviewed on: 1/13/12
Updates:
Recommendation:
File 19 – Steele

20 Zyla Rodriguez (GUARD/P) **Case No. 11CEPR01040**

Atty Hinton, Sandra (pro per – maternal grandmother/Petitioner)

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

Age: 7 months		
DOB: 06/08/11		
Cont. from		
	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**	
	9202	
✓	**Order**	
	Aff. Posting	
	Status Rpt	
✓	**UCCJEA**	
	Citation	
	FTB Notice	

TEMPORARY EXPIRES 01/23/12

SANDRA HINTON, maternal grandmother, is Petitioner.

Father: **JOSE RODRIQUEZ** – *court dispensed with notice on 12/05/11*

Mother: **DESIREE HINTON-WALLS**

Paternal grandparents: UNKNOWN

Maternal grandfather: ALVIN WALLS

Petitioner states that Zyla's mother is currently an inpatient at a psychiatric hospital and has been diagnosed with Post-Partum Psychosis. Mother has made a plan for the Petitioner to care for Zyla until she recovers from her illness. The father's whereabouts are unknown.

Court Investigator Charlotte Bien's report was filed 01/04/12.

NEEDS/PROBLEMS/COMMENTS:

1. **Need *Notice of Hearing.***
2. **Need proof of personal service at least 15 days before the hearing of *Notice of Hearing* with a copy of the *Petition for Guardianship* or Consent and Waiver of Notice or Declaration of Due Diligence for:**
   - Desiree Hinton-Walls (mother)
3. **Need proof of service by mail at least 15 days before the hearing of *Notice of Hearing* with a copy of the *Petition for Guardianship* or Consent and Waiver of Notice or Declaration of Due Diligence for:**
   - Paternal grandparents (unknown)
   - Alvin Walls (maternal grandfather)

Reviewed by: JF	
Reviewed on: 01/13/12	
Updates:	
Recommendation:	
File 20 - Rodriguez	

Dept. 303, 9:00 a.m. Monday, January 23, 2012

21 Jasmyne Marie Minton, Rose Marie Minton, and Ryan Allen Anthony Minton (GUARD/P) Case No. 11CEPR01044

Atty Kasparowitz, Lawrence (Pro Per – Maternal Grandfather – Petitioner)
Atty Millard, Maryl (Pro Per – Maternal Grandmother – Petitioner)

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

Jasmyne (6)
DOB: 7-9-05

Rose Marie (5)
DOB: 11-6-06

Ryan (3)
DOB: 1-31-08

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

TEMPORARY EXPIRES 1-23-12

LAWRENCE A. KASPAROWITZ and MARYL MILLARD, Maternal Grandparents, are Petitioners.

Father: **DAVID PATRICK MINTON**
- Nomination, Consent, and Waiver of Notice filed 11-28-11
Mother: **LARA MARIE MINTON**
- Nomination, Consent, and Waiver of Notice filed 11-22-11

Paternal Grandfather: Clyde Minton
Paternal Grandmother: Sheila Minton

Petitioners state the children need a relatively long term guardianship because the parents need time to be in a position to provide a safe environment. The parents have had seven years of drug and alcohol abuse, domestic violence, inadequate care and supervision of the children. Petitioners state the parents voluntarily placed the children with them in July of 2011. The children have lived on their property most of their lives and have close attachment to them. Jasmyne has lived with Petitioners since a restraining order was placed with reference to an assault on Jasmyne in 2010.

The temporary petition states the father was convicted in December 2010 of felony child abuse on Jasmyne (his second felony conviction). CPS placed all of the children with Petitioners in July and urged Petitioners to obtain guardianship. The temporary petition contains descriptions of the domestic abuse by the father.

Court Investigator Jo Ann Morris filed a report on 1-17-12.

NEEDS/PROBLEMS/COMMENTS:

1. **Petitioners' requests to waive Court fees were denied on 11-23-11. Filing fees of $265.00 are now due.**
2. **Need Notice of Hearing.**
3. **Need proof of service of Notice of Hearing with a copy of the Petition at least 15 days prior to the hearing per Probate Code §1511 or consent and waiver of notice on:**
   - Clyde Minton (Paternal Grandfather)
   - Sheila Minton (Paternal Grandmother)

Reviewed by: skc
Reviewed on: 1-12-12
Updates:
Recommendation:
File 21 - Minton

Pro Per **Lehman, Lorilla Fonda (Pro Per Petitioner, great aunt)**

Petition for Appointment of Probate Conservator of the Person (Prob. C. 1820, 182 2680-2682)

Age: 27 years		
DOB: not stated		
Cont. from		
	Aff.Sub.Wit.	
✓	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	X
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	X
✓	**Conf. Screen**	
	Aff. Posting	
✓	**Duties/Supp**	
	Objections	
✓	**Video Receipt**	
	CI Report	X
	9202	
✓	**Order**	
✓	**Letters**	
	Status Rpt	
	UCCJEA	
	Citation	X
	FTB Notice	

NO TEMPORARY REQUESTED

LORILLA FONDA LEHMAN, great aunt, is Petitioner and requests appointment as Conservator of the Person with medical consent powers.

***Medical Capacity Declaration* was filed on 1/17/2012.**

Petitioner states the proposed Conservatee is developmentally disabled and diagnosed with severe mental retardation, cerebral palsy, and has the mental capacity of two to three-year-old child due to her mother abusing drugs during pregnancy. Petitioner states the proposed Conservatee has been under Petitioner's care for ~14 years. Petitioner states she only recently learned that the proposed Conservatee is currently five months pregnant, as she has hidden her pregnancy well, and she is in desperate need of prenatal care, to which she has thus far refused to consent and has not received. Petitioner states the proposed Conservatee's mental status prevents her from understanding the repercussions of her refusal to consent to prenatal care for the baby, she is unable to understand what the doctor is trying to explain about an exam for checking the viability of the baby, and the doctor has been unable to perform any type of procedure due to proposed Conservatee's refusal. Petitioner states the proposed Conservatee needs to have someone to watch her daily for the remainder of her life.

NEEDS/PROBLEMS/COMMENTS:

Court Investigator Samantha Henson to provide *Advisement of Rights* and *CI Report*.

1. Need *Notice of Hearing* and proof of service by mail of the notice with a copy of the *Petition* showing notice was mailed at least 15 days before the hearing pursuant to Probate Code § 1822 for the following persons:
   - **Violet Morrow, mother;**
   - **Brandon Morrow, brother;**
   - **Joyce Ferrero, grandmother.**
2. **Need *Citation for Conservatorship* pursuant to Probate Code § 1823, and proof of personal service of the *Citation* to the proposed Conservatee pursuant to Probate Code § 1824.**
3. **Need proof of mailed service of the *Notice of Hearing* with a copy of the petition for the regional center pursuant to Probate Code § 1822(e).**

~Please see additional page~

Reviewed by: LEG

Reviewed on: 1/12/12

Updates: 1/17/12

Recommendation:

File 22 - Morrow

NEEDS/PROBLEMS/COMMENTS, continued:

4. ***Medical Capacity Declaration*** **filed on 1/17/2012 is incomplete at Item (6)(D) and (6)(E) (and at optional Item (F).) Further, Item 7(b) of the** ***Declaration*** **is not initialed by the physician as required when the physician intends to indicate that the proposed Conservatee lacks capacity to give informed consent to any form of medical treatment.**

First Report and Account of Trustee; Petition for Its Settlement and Allowance of Attorney's Fees; Petition for Reimbursement of Expenses

Age: 8
DOB: 10-31-03

Cont. from 010912

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

MARIA ALVAREZ-GARCIA, Maternal Grandmother, Guardian and Trustee of the Special Needs Trust, is Petitioner.

Account period: 6-4-10 through 10-18-11

Accounting: $208,497.05
Beginning POH: $100,000.00
Ending POH: $142,460.82 (cash only)

Reimburse Conservator: $1,897.09 for expenses associated with a vehicle (maintenance, registration, insurance) and expenses associated with travel to UCLA Medical Center.

Attorney: $3,249.00 (11 hours @ $295.00/hr)

Costs: $555.00 (filing fees)

Petitioner requests that further reports and accounts be waived since trust funds are invested in a blocked account and annuity payments are made directly to that account. The trustee is not receiving any fees.

Petitioner states that special needs include insurance and gasoline for vehicles and travel needs, and requests reimbursement for expenses associated with a vehicle and with travel to UCLA Medical Center.

Petitioner requests an order:

1. Settling, allowing and approving this first report and account;
2. Ratifying and approving all acts and transactions of the trustee as set forth in this account;
3. Authorizing payment of the attorney fees and costs;
4. Authorizing reimbursement to herself per above;
5. Waiving future accountings because funds are held in a blocked account.

NEEDS/PROBLEMS/COMMENTS:

SEE PAGE 2

Reviewed by: skc
Reviewed on: 12-23-11
Updates: 1-11-12
Recommendation:
File 23 - Carbajal

First Report and Account of Trustee; Petition for Its Settlement and Allowance of Attorney's Fees; Petition for Reimbursement of Expenses

NEEDS/PROBLEMS/COMMENTS (Continued):

1. **The trust was originally funded with cash and with an annuity that pays approx. $1,150.00 monthly. Schedule E Property on Hand lists only the cash held in the trust account. The annuity and its value should also be listed as an asset of the trust.**

   Declaration of Attorney Herold filed 1-10-12 states that the trust receives payments but is not the owner of the annuity. The owner is a third party administrator – Assigned Settlement Services Corporation.

   Examiner notes that this is not a typical situation (that the trust does not own the annuity, and that the owner is a third party administrator). Why does a third party administrator own the annuity? Was there another transaction involving the annuity separate from the civil settlement from which it was received, such as a sale of the annuity to a settlement company?
   The Court may require further clarification.

2. **It appears major purchases/disbursements were made and attorney fees paid without prior authorization from this Court.**
   The trust was brought under the jurisdiction of this Probate Court on 8-30-10. Petitioner refers to court orders dated 10-27-10 and 5-17-11 authorizing withdrawal for certain items; however, there is no documentation in this file regarding such authorization. Were these items authorized by another Court? If so, it appears that such petition and authorization may be inappropriate.

   Need clarification regarding the following items with reference to the following notes:
   - Vehicle $48,493.07
   - Car Audio $950.00
   - TV and Computer $2,322.25
   - Attorney Fees $1,746.50 (Bolen Fransen LLP)
   - Attorney Fees $3,704.92 (Camp Rousseau Montgomery LLP)
   - Attorney Costs $1,363.00 (Bolen Fransen, LLP)
   - Second Mortgage $4,971.49
   - Screen Door $500.00
   - Vacation $1,985.00

   a. None of the tangible items purchased with special needs trust funds are listed as assets of the trust or property on hand.
   In addition to the annuity per #1 above, Schedule E should also include the vehicle, the electronics, and possibly an interest in the house (see below). The Court may require clarification, amendment of account and/or amendment of the various titles.

   Note: Petitioner requests reimbursement for costs associated with the vehicle, such as maintenance, registration, insurance, etc., which implies that it is an asset of the trust, but it does not appear as property on hand. How is title held?

   b. Need clarification regarding the use of special needs trust funds for payment of second mortgage on trustee's home.
   The Ex Parte Petition for Withdrawal of Funds filed 10-24-11 *begins* to explain that the trust authorizes the purchase of a residence for the beneficiary, and because his grandmother and guardian now cares for him, she is not able to work and therefore, has not kept up payments on a second mortgage on her residence. However, the narrative is incomplete, the 10-24-11 petition did not request that amount, and payment does not appear to have been approved by this Probate Court.

   Although the narrative points to the trust's authorization to purchase real property for the beneficiary as authority for this disbursement, Petitioner does not state whether the second mortgage was paid in full or simply brought current, how the payment qualifies as a special need for the beneficiary, or whether the trust/beneficiary received consideration, such as an interest in the real property, for the contribution toward the home.

   c. Need clarification regarding the use of special needs trust funds for a screen door. Was this purchase for the residence? Does the minor or the trust have an interest in or receive specific special needs benefit from this item? Examiner notes that, on its face, this appears to be an expenditure typical of home-ownership; however, because the trust does not own the home, the Court may require clarification.

   c. Need clarification regarding the use of special needs trust funds of $1,985.00 for a vacation. Examiner does not see authorization from this Court for such expenditure.

SEE PAGE 3

First Report and Account of Trustee; Petition for Its Settlement and Allowance of Attorney's Fees; Petition for Reimbursement of Expenses

NEEDS/PROBLEMS/COMMENTS (Continued):

#2 (Continued):

Declaration of Attorney Herold filed 1-10-12 states that the parties were unaware that a probate case had been opened for the trust because a website search returned only the civil case. Accordingly, requests for disbursements were made to and approved by the civil Court. Attached to the Declaration are the civil Court orders authorizing the distributions.

The Declaration states the vehicle (with audio system) is owned by Maria Alvarez-Garcia. The distribution was made personally to her because it is difficult to obtain car insurance if the owner is the trust, and also to avoid any liability to the trust in the event of an accident and/or lawsuit. The TV and computer are likewise owned by Maria Alvarez-Garcia and are located in the beneficiary's bedroom.

The Declaration states the residence is owned by Maria Alvarez-Garcia and her husband. The distributions for the second mortgage and screen door were to assist them in maintaining a residence for the beneficiary and to provide a screen door for the beneficiary's bedroom for fresh air when he is unable to be out of bed. The distribution to the second mortgage paid off that mortgage, which reduced the family's monthly burden of taking care of the beneficiary. The trust does not have an ownership interest in the residence.

The civil Court approved the $1,985.00 for a vacation to Legoland. The trust specifically allows for distributions for a vacation and the details of the vacation were set forth on the ex parte petition.

Examiner notes that the Declaration attaches the civil Court orders, but does not provide copies of the petitions to the civil Court. The Court may require copies of the corresponding petitions for a more complete file.

Examiner notes that disbursements for items that the trust would not hold title to is not typical for special needs trusts. The Court may require further clarification.

3. **Attorney's fee calculation of $3,249.00 appears incorrect. Examiner calculates 11 hours @ $295/hr = $3,245.00 (a $4.00 difference).** ***Declaration states the correct amount is $3,245.*****00.**

4. **Attorney's fees include 3.8 hours or $1,121.00 in connection with two requests for withdrawal of funds. The Court may require clarification.** ***Declaration states detailed descriptions were provided to the civil Court in connection with the ex parte petitions that were presented there.***

5. **Petitioner requests to waive future accountings; however, based on the above issues, the Court may require further clarification regarding the potential trust assets, and more specific language in the order regarding the disposition of such assets, before authorizing such waiver.**

   Also, if future accountings are waived, the Court may set status hearings annually or biennially for brief status reports on the trust.

   Declaration states that since the only assets are blocked, waiver of account would reduce attorney fees and court costs payable by the trust.