# 1 Genevieve Hall (Estate) Case No. 07CEPR00471

**Atty** Baldwin, Kenneth A. (for Jeannie Barry-Sanders)
**Atty** Knudson, David N. (for Jennifer Hall – objector/Former Administrator)
**Atty** Kruthers, Heather H. (for Public Administrator – Successor Administrator/Petitioner)

**(1) First and Final Account and Report of Successor Administrator and (2) Petition for Allowance of Ordinary and Extraordinary Commissions and Fees and (3) for Distribution**

**DOD: 11/23/06**

**Cont. from**

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| ✓ | Verified | |
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| ✓ | Notice of Hrg | |
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| | Conf. Screen | |
| | Letters | 04/23/09 |
| | Duties/Supp | |
| | Objections | |
| | Video Receipt | |
| | CI Report | |
| ✓ | 9202 | |
| ✓ | Order | |
| | Aff. Posting | |
| | Status Rpt | |
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| | Citation | |
| ✓ | FTB Notice | |

**PUBLIC ADMINISTRATOR,** Successor Administrator, is Petitioner.

Account period: **04/03/09 – 06/10/11**

Accounting - **$272,500.00**
Beginning POH - **$247,500.00**
Ending POH - **$58,334.12**

Administrator - **$3,884.00** (statutory)

Administrator x/o fees - **$1,248.00** (for sale of real property and preparation of tax returns)

Attorney - **$3,884.00** (statutory, to be split $1,942.00 to County Counsel and $1,942.00 to David N. Knudson)

Attorney x/o fees - **$1,725.00** (to County Counsel for surcharge action against former administrator)

Attorney x/o fees - **$8,761.75** (David Knudson – counsel for former Administrator, itemized for representation in Will Contest, defense against Surcharge action, resolution of Code Enforcement issues regarding the real property of the estate)

Costs - **$4,900.64** ($3,302.02 to David Knudson for repayment of costs advanced, and funds advanced to heirs; $1,298.62 to Lester Hall for payment of property taxes; and $300.00 to Jennifer Hall for paralegal fees)

Costs - **$441.50** (to County Counsel for filing fees and certified copies fees)

Bond fee - **$1,362.50** (ok)

Closing - **$1,000.00**

Petitioner states that a creditor's claim by the County of Fresno in the amount of $56,393.61 and a creditor's claim by Capital One in the amount of $960.12 were filed in this matter and not acted upon by the former Administrator. Petitioner states that they have filed allowances of both of these claims in their entireties; however, the estate is not sufficient to pay either claim in full. The County's claim is 98% of the total and Capital One is 2%. Petitioner proposes to distribute the remaining cash in the estate after payment of approved fees and costs in these percentages to these creditors.

**Continued on page 2**

**NEEDS/PROBLEMS/COMMENTS:**

**Reviewed by:** JF
**Reviewed on:** 02/08/12
**Updates:**
**Recommendation:**
**File 1 - Hall**

**Petitioner requests authority to make payment of the creditor's claims with the remaining estate after the payment of approved fees and costs as follows:**

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| County of Fresno | - | $30,504.20 |
| Capital One | - | $622.53 |

After payment of fees and costs of administration and only partial payment of the creditor's claims, there will be no estate to distribute to the decedent's heirs.

**Objection to First and Final Account of Successor Administrator and Petition for Apportionment of Statutory Compensation, Commissions, Etc.** filed by Former Administrator, Jennifer Hall, on 02/01/12 states:

1) After a contest, Ms. Hall was appointed personal representative on September 4, 2007. Bond was posted and Letters were issued to Ms. Hall on September 21, 2007.
2) On April 2, 2009, Ms. Hall was removed as Administrator and the Public Administrator was appointed as successor personal representative and continues to act as the personal representative.
3) On July 8, 2010, Ms. Hall filed her First Account and Status Report of the Estate and Petition for Determination of Entitlement to Estate Distribution. Subsequently, the Public Administrator brought a Petition for Surcharge against Ms. Hall for breach of fiduciary duty.
4) On December 1, 2010, an order settling Ms. Hall's First and Final Account as Administrator was entered, but ruling on the Public Administrator's Petition for Surcharge was reserved.
5) On February 25, 2011, the parties reached a settlement of the surcharge action, agreeing to a surcharge of $25,000.00 against Ms. Hall. Western Surety, who issued the bond, deposited the full $25,000.00 into the estate in full satisfaction of the surcharged amount and the Public Administrator dismissed the Petition for Surcharge, with prejudice.
6) Ms. Hall objects to the Public Administrator's proposed non-allocation of any portion of the statutory fee to her as the former Administrator. She served as Administrator for two of the four years of administration of the estate. Petitioner states that "although the former administrator, Ms. Hall Hall, has requested payment of part of the statutory fee, Petitioner does not include that request because she was surcharged $25,000.00".
7) Ms. Hall states that the Petition fails to state, however, that the amount of the surcharge has been paid in full, thus the estate has been reimbursed the full amount of the surcharge. Further, Ms. Hall states that the Petitioner does not present any authority that bars payment to a surcharged administrator when the surcharge has been paid.
8) Ms. Hall states that Probate Code § 10805 provides that if there are 2 or more personal representatives, the personal representative's compensation shall be apportioned among the personal representatives by the Court according to the services actually rendered by each personal representative or as agreed to by the personal representatives. Nothing in the code gives discretion or authority to deny an allocation, particularly where, as here, the estate has been made whole by payment of the full amount of the stipulated surcharge.
9) Ms. Hall states that she served as administrator for approximately 1.5 years and during that time she rendered services in the administration of the estate concerning the management of the estate properties and their care and maintenance. Such services could possibly even have compensated as extraordinary compensation, by Ms. Hall has not made a request for such extraordinary compensation.
10) In contrast, the Petitioner took action to sell the estate's properties and ended up determining that ½ interest in one of the properties went to Robert Davis, although, Ms. Hall contends that this property was provided by the decedent and title was taken in two names.

11) Petitioner is seeking extraordinary compensation of $1,000.00 for the sale of the estate's real property and was compensated for handling the summary administration of the estate or Robert Davis, which involved property in which this estate had an interest. Therefore, Ms. Hall asserts, that there is no basis to apportion the statutory fee entirely to one personal representative to the exclusion of the other.
12) Ms. Hall states that the continued prolongation of the estate administration was due to settling the surcharge action brought by the Public Administrator; all other administrative acts have long been completed. No information has been presented by the Petitioner as to the amount of services rendered by them nor are there any other factors set forth that support an award of the full statutory compensation solely to one of the personal representatives.
13) Accordingly, Ms. Hall requests that she be allowed a portion of the statutory compensation. As agreed by the counsel for the Public Administrator and counsel for Ms. Hall with respect to the statutory attorney's fees, Ms. Hall requests that she be allocated no less than 50% of the statutory compensation for services rendered as Administrator.

**Declaration of Jennifer Hall in Support of Objection to First and Final Account of Successor Administrator** filed 02/01/12 states:

1) The decedent died on 11/23/06. From the time of her death, Ms. Hall actively embarked on doing what needed to be done in handling the decedent's estate. It became clear that a probate action was necessary and Ms. Hall sought the assistance of a paralegal and filed a Petition for probate. Ms. Hall states that she also engaged the Probate Referee and obtained an Inventory & Appraisal.
2) A contest to the appointment of Ms. Hall was filed by Ms. Barry-Sanders on behalf of her brother, Ben Johnson, who was married to the decedent for a short time before her death.
3) Even though she initially petitioned to be appointed as Administration in May 2007, she was not appointed until September 2007.
4) The decedent had 17 children and there were 18 living beneficiaries of the estate, since one of her children was deceased leaving two children. Ms. Hall states that all of her siblings agreed that she should be the administrator of the estate and that they had no knowledge of the claim that Ben Johnson might have in their mother's estate since their mother's property was acquired long before her marriage to Ben Johnson and Mr. Johnson appeared to acknowledge that fact and left the decedent's residence shortly after her death.
5) The decedent had two houses. Upon being appointed Administrator, Ms. Hall began working on maintaining the houses. Over the years, the homes had become a place for family members to live. The properties were in disrepair and were in violation of City of Fresno Code Enforcement Division for weeds, overhanging branches and similar violations.
6) Ms. Hall states that she worked on the properties, cleaning them up and arranged for the necessary tree trimming and brush removal. Further, she states that she maintained the insurance on the homes.
7) It became clear that other family members were not willing to help in maintenance of the properties and to the extent possible, Ms. Hall continued to oversee the properties to ensure that they were secure. The properties were dilapidated and would need extensive repairs to make them habitable.
8) Through her attorney, Ms. Hall filed a Petition to Determine Entitlement to Distribution and hired a qualified document examiner to examine the signature on the purported will of Ben Johnson, it was determined that the signature was invalid.
9) Ms. Hall states that she attended various hearings while she was the administrator and estimates that she spent between 180 to 250 hours on estate matters.
10) Ms. Hall further states that the surcharge against her has been paid in full, and she does not believe that the fact that a surcharge was entered against her constitutes sufficient reason to deny allocation of aportion of the statutory compensation to her for services rendered as administrator.

**2** **Kenneth L. Coker (Estate)** **Case No. 08CEPR01037**

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

**(1) First and Final Account and Report of Administrator and (2) Petition for Allowance of Ordinary and Extraordinary Commissions and Fees (Prob. C. 9202, 10800, 10810, 10951, 11600)**

**DOD: 10/11/08**

**Cont. from 011812**

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| | Duties/Supp | |
| | Objections | |
| | Video Receipt | |
| | CI Report | |
| ✓ | 9202 | |
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| ✓ | FTB Notice | |

**PUBLIC ADMINISTRATOR**, Administrator with Will Annexed, is petitioner.

Account period: 2/17/09 – 6/30/11

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| Accounting | - | **$139,225.00** |
| Beginning POH | - | **$129,635.00** |
| Ending POH | - | **$ 6,422.40** |
| Administrator (statutory) | - | **$5,041.00** |
| Administrator X/O (per Local Rule for sale of personal property and preparation of tax returns) | - | **$1,127.85** |
| Attorney (statutory) | - | **$5,041.00** |
| Court fees (certified copies) | - | **$15.50** |
| Bond Fee (o.k.) | - | **$812.28** |
| Closing | - | **$1,000.00** |

**Petitioner states** that the estate is insolvent. After payment of fees and commissions there will be no estate left to pay creditors or heirs.

**NEEDS/PROBLEMS/COMMENTS:**

**Continued from 1/18/2012. As of 2/7/12 the following issue remains:**

1. **Petition indicates the decedent's ½ interest in real property valued at $118,000.00 was foreclosed upon. *Estate of Stein (1968) 267 Cal. App. 2, 631* found when calculating the statutory fees for estates where there was foreclosed property the loss is the difference between the inventory and appraisal value and the encumbrances on the property. Petition did not include information regarding the encumbrances on the property therefore examiner is unable to verify that the statutory fees and commissions are correct.**

**Reviewed by: KT**

**Reviewed on: 2/7/12**

**Updates:**

**Recommendation:**

**File 2 - Coker**



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

# 3A Arthur Hermosillo (CONS/PE) Case No. 11CEPR00214

**Atty** LeVan, Nancy J., sole practitioner (for Katrina Leal, daughter, and Jason Hermosillo, son)
**Atty** Magness, Marcus; Goodwin, Tracie, of Gilmore Wood Vinnard & Magness (for Arthur Hermosillo, proposed Conservatee, and for Jessica Hermosillo, daughter)
**Atty** Kruthers, Heather H., of County Counsel (for Public Guardian, Temporary Conservator)

**Petition to Compel Formal Accounting from Jessica Hermosillo, Attorney-in-Fact, and Declaring Fiduciary has Violated or is Unfit to Perform the Fiduciary Duties Under Power of Attorney; Revocation of Current Power of Attorney Because of Incapacity of Principal and Invalid Notarization and for Attorney Fees and Costs (Prob. C. 4541, 4545)**

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| Age: 53 years | | |
| DOB: 1/1/1958 | | |
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**KATRINA LEAL** and **JASON HERMOSILLO,** children, are Petitioners.

**Petitioners state:**

- **ARTHUR HERMOSILLO**, Principal under a *General Durable Power of Attorney for Healthcare and Finance* executed 1/4/2011 naming his daughter, **JESSICA HERMOSILLO**, as attorney-in-fact, is currently separated from his wife, **SANDIE HERMOSILLO**, and he resides with Jessica after filing for divorce based upon lies by Jessica alleging Sandie was attempting to steal all of the community property for herself;
- Arthur executed a previous *Durable Power of Attorney* on 8/6/2006, after he and Sandie's separation in the summer of 2005, which named Sandie as attorney-in-fact, giving Sandie full power to receive, disburse, manage and control all of Arthur's property; neither Sandie's nor Jessica's *Power of Attorney* eliminate Petitioners' rights to bring this *Petition*;
- At the advice of an attorney and for the benefit of Arthur's and Sandie's children, Sandie as Trustee transferred all community property into the **HERMOSILLO FAMILY TRUST**, naming all three children as beneficiaries, to avoid probate and because of the circumstances of Arthur's erratic behavior;
- Following Arthur's strokes in 2006 and 2007, Sandie moved into Arthur's residence and took care of Arthur and his finances as agreed upon by him; Sandie hired a caregiver from 8 am to 5 pm six days a week while Sandie handled all financial matters;
- At a family meeting it was agreed that Jessica would take Arthur into her home to care for him and she would be paid **$350.00** per month for rent, which was raised to **$600.00** upon Jessica's request and family agreement; Jessica continued to ask for more money to care for Arthur and to pay for her **$6,000.00** school loan;
- Jessica began to have financial problems in October 2010, which coincides with her refusal to bring Arthur to family functions and her isolation of him from the family;

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

**NEEDS/PROBLEMS/COMMENTS:**

**Page 3B is Jessica Hermosillo's *Motion to Strike Portions of Petition to Compel*.**

**Continued from 1/30/2012. *Minute Order* states Ms. Goodwin requests that the issue of the accounting be bifurcated and heard on 2/16/2012. The Court grants the request.**

**1. Need proposed order.**

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| **Reviewed by:** LEG |
| **Reviewed on:** 2/7/12 |
| **Updates:** |
| **Recommendation:** |
| **File 3A - Hermosillo** |



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

**Petitioners state, continued:**

- In December 2010, Jessica demanded more money for the care of Arthur, and following Sandie's refusal Jessica began acting strangely by sending the care provider away from the home and leaving the house when the caretaker or family members would visit Arthur;
- Arthur was diagnosed with a brain bleed on 1/7/2011 following an MRI and was immediately taken to the emergency room; Sandie brought her Power of Attorney for Health Care but could not get any information because Arthur signed a Revocation of Power of Attorney and a new Power of Attorney for Health Care and Finance naming Jessica as agent; Arthur signed these documents while suffering a brain bleed and he was not competent to sign any legal document;
- On 1/28/2011, Jessica took Arthur to Wells Fargo Bank and withdrew **$82,000.00** from a home line of equity which was tied to a joint account belonging to Arthur and Sandie; Jessica had no authority to do this from Sandie nor justification for her actions; Jessica stated she and Arthur were going to make payments but not payments have been made and Arthur only gets **$1,205.00** from Social Security, and Jessica makes a $1,200.00 per month withdrawal, leaving nothing left to make a payment on the home equity line of credit;
- Per the 3/29/2011 Court order, Attorney Marcus Magness provided Petitioners with a list of deposits and withdrawals Jessica made from Arthur's account; however, the list did not include reasons for hundreds of dollars in withdrawals and does not address what happened to the **$3,000.00** cash given to Jessica when she took Arthur to Wells Fargo;
- Petitioners request the Jessica provide a full accounting pursuant to Probate Code §§ 4540 and 4541(c), following the form of accountings in estate and conservatorship matters; the receipts provided along with the informal accounting does not total the amounts withdrawn or spent;
- Petitioners also request the revocation of the Durable Power of Attorney naming Jessica as agent under Probate Code § 4541(d)(1), as the notary used for both the revocation and the power of attorney is **ELIZABETH ROUSE**, who was hired as Arthur's caregiver on 3/25/2011 and is also Jessica's landlord, and would have a financial interest in the document she notarized; Government Code § 8224 provides "a notary public who has a direct financial or beneficial interest in a transaction shall not perform any notarial act in connection with such transaction" and the documents allow Ms. Rouse beneficial interests for payment of rent and payment as caregiver;
- Jessica has violated her fiduciary duty to Arthur by obtaining a loan without a plan to repay, spending the money for her own benefit, attempting to justify fees paid to caregivers by preparing and submitting false receipts, and used her friendship with Ms. Rouse to have documents notarized that put Jessica in charge of Arthur's finances;
- Jessica is unfit to fulfill he office of power of attorney because she currently has three pending judgments against her for breach of contract for failure to pay attorney fees in other matters; she has been reported to the Welfare Fraud Division for falsely receiving benefits for her children that do not reside full time with Jessica and she has fraudulently received over **$4,000.00** from welfare; Jessica and her husband Joe previously took out a **$30,000.00** line of credit on a house purchased by Arthur and Sandie, which was taken in 2002 and Sandie did not learn about until 2003;
- Arthur did not have capacity when he executed the Revocation of Power of Attorney and signed the new Power of Attorney naming Jessica, and under Probate Code § 4541(d)(2), the Court can make this determination.

**Petitioners pray that the Court order:**

1. Jessica Hermosillo must provide a complete accounting from the period when she was attorney-in-fact from 1/4/2010 until 6/27/2011;
2. The current Durable Power of Attorney naming Jessica Hermosillo as attorney-in-fact is void because of the lack of capacity of Arthur to sign legal documents on the day they were executed and were notarized by a financially interested party; and
3. That Jessica Hermosillo breached her fiduciary duty to Arthur and should be held liable for twice the amount of loss the estate has suffered.

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

# Second Additional Page 3A, Arthur Hermosillo (CONS/PE) Case No. 11CEPR00214

***Respondent Jessica Hermosillo's Opposition to Petition to Declare Fiduciary Has Violated or is Unfit to Perform Fiduciary Duties under Power of Attorney, Etc.* filed on 11/2/2011 states:**

- Arthur Hermasillo and Sandie Hermosillo have been separated since the summer of 2005 and have made no attempts to reconcile their marriage since that time; Arthur had set up an appointment to initiate divorce proceedings but suffered his first stroke before he was able to meet with the attorney, and following his strokes in 2006 he was dependent upon others to provide assistance with daily activities; caregivers were hired by Sandie who never actually provided Arthur with any care, and Arthur's dependence on others precluded him from filing divorce proceedings as he would not go anywhere without Sandie's approval;
- Contrary to Petitioner's allegations that Jessica unduly influence Arthur to file for divorce, in truth Arthur filed for divorce after he discovered that Sandie, without his knowledge, transferred title to two of their rental properties and title to their personal residence into her own name, and from her own name into a revocable trust that she controls under a power of attorney that Arthur purportedly signed in 2006 immediately after his first stroke;
- Sandie purportedly transferred her and Arthur's community property into a revocable trust for the benefit of Arthur and their children; however, Arthur is not a beneficiary of the trust, and if Sandie were to die before Arthur, he would be almost penniless and dependent upon the mercy of his children;
- Sandie has taken complete control of Arthur's assets and the only person Sandie intended to benefit from transferring Arthur's assets into the trust was herself; had Arthur not discovered Sandie's action, she would have taken all of his property;
- Even if the 2006 Durable Power of attorney was valid, which is questionable, this document did not authorize Sandie to transfer Arthur's assets to a trust without his knowledge or consent; Sandie's conduct was in clear violation of her fiduciary duties to Arthur including her duties of loyalty, to keep him informed, and to hold his property separate and identifiable;
- After Sandie moved back into the couple's residence in 2007, Arthur's living situation became intolerable; he was forced to stand by as Sandie spent their money on lavish vacation while he was left home and brought her boyfriends home to their residence to spend the night;
- In 2010, after Sandie took two month-long vacations and one three-week vacation, Arthur told his family that he did not want to continue living with Sandie, and Jessica offered to have Arthur live with her;
- After Arthur moved in with Jessica, Sandie only gave Jessica **$350** per month for Arthur's food, rent, prescriptions and other expenses, which was Arthur's only money, and even his Social Security check was automatically deposited into a checking account that Sandie controlled; Arthur's expenses averaged at least **$800** per month and the money from Sandie did not even cover half of his expenses; after a family meeting, Sandie and Petitioners agreed Sandie would pay Jessica **$500** per month and the Petitioners would donate **$50** per month, but the **$600** per month still did not cover Arthur's expenses and Jessica continued to spend $300 of her own money each month to cover the difference;
- Petitioners' allegation that Jessica asked Sandie to pay off her student loan is a complete fabrication; rather, Jessica talked to Sandie about different payment options on student loans since Sandie is a college counselor and has personal experience with student loans;
- Jessica denies that she began having financial problems in October 2010; she has been able to timely pay her bills and financially maintain her household; she has been using her own money to help pay Arthur's monthly expenses;
- Jessica did not refuse to bring Arthur to 2010 Thanksgiving and Christmas celebrations, as Arthur makes his own decisions as to his holidays and he prefers to spend them with his 87-year-old mother and his siblings;
- Petitioner (Katrina) arranged with Arthur on 10/3/11 after the Court hearing to pick up Arthur on 10/7/11 to spend the night with her family, after Arthur packed and was prepared to go on 10/7, Katrina never showed up; Jessica has at no time prevented Arthur from visiting Petitioners, and she has never refused to answer the door nor purposely left the house to avoid their visits; it is Petitioners who have failed to come and visit when they told Arthur they would;
- Jessica requested more money in 12/2010 to assist with Arthur's care; the caregiver Sandie hired was unreliable and would often not show up or would leave early without advance notice, and Jessica had to continually take time off work without advance notice to her employer to stay home and assist Arthur;

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

***Respondent Jessica Hermosillo's Opposition*, continued:**

- Arthur was diagnosed with a subdural hematoma (brain bleed) before his MRI and was admitted to the hospital as a precautionary measure but was released after two days; Jessica never withheld any information about Arthur's medical condition because neither Sandie, Katrina nor Jason (Petitioner) ever asked her for any such information;
- Petitioners' contention that Arthur revoked Sandie's power of attorney and she could not get medical information at the hospital [on 1/7/2011] is a sham, as Arthur did not revoke it until 2/2011; more important, the purpose of Sandie's visit to the hospital was not to check on Arthur's medical condition but to try to talk the hospital social worker into releasing Arthur into her car without Arthur or Jessica's knowledge; Arthur became extremely upset upon learning that he was going to be released into Sandie's care, and the social worker found Arthur was able to make his own decision on where he wanted to go upon release; Arthur was adamant he did not want to go with Sandie and wanted to go home with Jessica;
- It is not so, as Petitioners contend, that Arthur was not competent when he signed the 1/4/2011 Durable Power of Attorney naming Jessica as his attorney in fact because he was suffering a brain bleed, as the subdural hematoma/brain bleed had no effect on Arthur's cognitive abilities and Petitioners have produced no evidence to the contrary; Arthur was fully able to communicate and understand what he was signing and the consequences of signing it; even so, this contention is moot as Jessica never exercised her powers under that document and it has since been revoked;
- It is incorrect, as Petitioners content, that Jessica was responsible for the **$82,000** line of credit on Arthur's account, as Arthur is co-owner of the account and signed and submitted the application on his own volition and the bank accepted it; there was no need for Jessica to exercise her powers under the Durable Power of Attorney; Arthur was fully justified in taking out the line of credit because Sandie has been keeping all of this money and property from him for years; until 1/2011 Sandie was keeping Arthur's **$1,205** monthly Social Security check from him, and until 7/2011 Sandie was also keeping Arthur's pension benefits for herself after she filed an application with the City of Azusa for his pension benefits, without Arthur's knowledge, and Arthur became aware only after the Public Guardian discovered they were being deposited into an account over which Sandie had control; because Sandie refuses to turn over the joint bank account statements to Arthur's divorce attorney and the Public Guardian, it is not clear how long the City of Azusa has been paying these benefits but it is clear Sandie received and kept them from at least 1/2011 through 6/2011; ultimately, the responsibility for the **$82,000** debt will be decided in Arthur's divorce proceeding; the **$3,000** retained from the **$82,000** line of credit was used to partially reimburse Jessica for the expenses she paid on behalf of Arthur from 3/2010 through 12/2010;
- Jessica's previous drug addiction has no bearing on her ability to serve as Arthur's attorney-in-fact, but to clarify the situation, she went through a painful divorce and found herself involved in the wrong crown and became addicted to methamphetamine; in 12/2005 Jessica admitted herself to a rehabilitation facility and she has been drug-free since then;
- As Arthur's temporary conservator, the Public Guardian has standing to seek the Court's authorization to revoke the 3/25/2011 Durable Power of Attorney but it has not done so, and there is no reason to do so because it has found no wrongdoing by Jessica;
- The true purpose behind these proceedings is to stop Arthur from going through his divorce so Sandie can retain control over his money and property; Jessica alleges that Petitioners are using Arthur's own funds to pursue this proceeding and the related conservatorship action filed against Arthur; **Sandie is paying the attorney fees and costs and is using community property funds to do so, and as a result Arthur is entitled to a surcharge against Petitioners; this proceeding was brought by Petitioners without reasonable cause and Jessica is entitled to an award of attorney's fees and costs pursuant to Probate Code §§ 1002 and 4545 (a).**

**3B Arthur Hermosillo (CONS/PE) Case No. 11CEPR00214**

**Atty LeVan, Nancy J., sole practitioner (for Katrina Leal, daughter, and Jason Hermosillo, son)**
**Atty Magness, Marcus; Goodwin, Tracie, of Gilmore Wood Vinnard & Magness (for Arthur Hermosillo, proposed Conservatee, and for Jessica Hermosillo, daughter)**
**Atty Kruthers, Heather H., of County Counsel (for Public Guardian, Temporary Conservator)**

**Respondent Jessica Hermosillo's Notice of and Motion to Strike Portions of Petition to Compel Formal Accounting, etc.; Memorandum of Points and Authorities in Support Thereof**

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| Age: 53 years | | |
| DOB: 1/1/1958 | | |
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| Cont. from 110711, 112911, 013012 | | |
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**JESSICA HERMOSILLO** (Respondent) moves the Court pursuant to Code of Civil Procedure § 436 for an order granting her *Motion to Strike* the following portions from the *Petition to Compel Formal Accounting from Jessica Hermosillo*:

- Portion of *Petition* requesting that Jessica provide a full accounting pursuant to Probate Code § 4540 and 4541(c) following the format of accountings required in estate and conservatorship matters; and
- Portion of *Petition* requesting a complete accounting from Jessica for the period she was attorney-in-fact for Arthur from 1/4/2010 until 6/27/2010.

**Movant states Petitioners are not entitled to receive a formal accounting from Respondent for the following reasons:**

1. Petitioners have failed to comply with Probate Code § 4541(c) as they have not and cannot allege that they made a written request to Respondent to submit an accounting and that the Respondent failed to comply with such written request within 60 days from date of the request;
2. There has been no finding by the Court that Petitioners are parties entitled to a formal accounting; even assuming Petitioners have standing to bring this Petition, the only party who is entitled to a formal accounting is the Public Guardian, Arthur's Temporary Conservator;
3. Petitioners have failed to show good cause for this Petition, as Respondent has submitted two timely informal accountings to the Public Guardian, who has found them satisfactory; as such, Petitioners' request is not reasonably necessary for the protection of Arthur or his estate.

This *Motion* is based on the *Notice of Motion*, the *Memorandum of Points and Authorities*, the *Declaration of Marcus D. Magness*, all of the records, pleadings, and papers on file with the Court, and upon such further oral and documentary evidence which may be presented at the hearing.

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

**NEEDS/PROBLEMS/ COMMENTS:**

**<u>Continued from 1/30/2012</u>. *Minute Order* states Ms. Goodwin requests that the issue of the accounting be bifurcated and heard on 2/16/2012. The Court grants the request.**

| | |
|---|---|
| **Reviewed by:** | LEG |
| **Reviewed on:** | 2/7/12 |
| **Updates:** | |
| **Recommendation:** | |
| **File 3B - Hermosillo** | |



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

***Memorandum of Points and Authorities* [citations omitted] attached to the *Motion to Strike* states:**

- Petitioners are requesting the Court appoint them as conservators of Arthur Hermosillo's person and estate [in Case No. 11CEPR00214], and the evidence demonstrates that the purpose behind these related proceedings is not to protect Arthur or his estate, but is instead a blatant attempt to prevent Arthur from divorcing Sandie Hermosillo and retaining control of his ½ of the community property assets;
- Since Petitioners have so far been unsuccessful in being appointed conservators, they are now resorting to vicious and unfounded personal attacks against Respondent to challenge the Durable Power of Attorney naming her as Arthur's attorney-in-fact;
- Petitioners' request for an accounting is simply a ruse to diver the Court's attention from the fact that Sandie Hermosillo is continuing to steal Arthur's ½ of the community property assets, consisting of 18 residential properties earning ~**$20,000.00** in rental income each month, while Arthur is forced to live on his **$1,205.00** monthly Social Security check and Respondent's financial assistance;
- Petitioners did not file any objections to Respondent's two informal accountings before they filed the instant *Petition*, and they never asked for additional information or explanation; Petitioners filed an *Objection to Accounting* on 9/26/2011 in the conservatorship proceedings 5 months after the informal accountings were voluntarily provided;
- The Public Guardian has requested and been provided with all backup documents and explanation, and Public Guardian submitted to this Court under penalty of perjury that it found no wrongdoing;
- Petitioners' request for an accounting fails to comply with the requirements of Probate Code § 4541(c) and was brought in bad faith, and as such, the request to compel a formal accounting should be stricken from the *Petition*;
- Respondent is entitled to her attorney's fees incurred in filing this *Motion* since the *Petition* was filed without any reasonable cause.

***Request for Judicial Notice in Support of Respondent Jessica Hermosillo's Motion to Strike Portions of Petition to Compel Formal Accounting, etc.*, filed on 10/13/2011 requests the Court take judicial notice pursuant to Evidence Code § 452 of the following document:**

- *Declaration of Deputy Public Guardian Renee Garcia-Widjaja Regarding Conservatee's Finances* [filed on 8/11/2011] *(copy attached as Exhibit A).*

**4 Donna J. Bonham (Estate)** **Case No. 11CEPR00788**

**Atty Felger, Warren P. (for Toni Richardson – Daughter – Petitioner)**

**Second Amended Petition for Letters of Administration**

| DOD: 6-2-11 | | |
|---|---|---|
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| | | |
| | | |
| | | |
| | 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 | |

**TONI RICHARDSON**, Daughter, is Petitioner and requests appointment as Administrator without bond.

IAEA: Not requested

Decedent died intestate.

Residence: Fresno
Publication: Fresno Business Journal

**Estimated value of estate:**
Personal property: $2,000.00
Real property: $31,000.00
($78,000.00 less encumbrance $47,000.00)
**Total: $33,000.00**

Probate Referee: Steven Diebert

**NEEDS/PROBLEMS/COMMENTS:**

**Note: This Petitioner previously requested to admit a will to Probate; however, Examiner noted that the signature on the will was not original and the Court requested clarification.**

**In this Second Amended Petition, Petitioner (now represented by counsel) states that the decedent died *intestate* and filed a supporting declaration stating that the will was a forgery; that she signed the will; that she knew it was wrong; she was influenced and intimidated by her brother, who "has been convicted of several crimes, some felonies."**

**Petitioner states she is sorry for signing the will, offers her deepest apologies, and prepared this declaration at the recommendation of her attorney. See Declaration filed 1-17-12.**

1. **The Petition does not request any authority under IAEA (No box is checked at #2.c.); however, the submitted order indicates Limited authority. Need clarification.**

   ***Examiner notes that the published notice and the notice to the heirs do both include reference to authority under IAEA.***

2. **The Court may require bond pursuant to Probate Code §8480.**

**Reviewed by:** skc
**Reviewed on:** 2-8-12
**Updates:**
**Recommendation:**
**File 4 - Bonham**

**5** **Gail I. Wilkinson (Estate)** **Case No. 11CEPR01112**

**Atty** **Mele, James J. (for Petitioner James Mele)**

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

| | | | |
|---|---|---|---|
| DOD: 11/24/11 | | | **JAMES MELE**, named executor without bond, is petitioner. |
| | | | |
| | | | |
| | | | Full IAEA – o.k. |
| Cont. from | | | |
| | Aff.Sub.Wit. | | Will dated: 6/17/2005 |
| ✓ | Verified | | |
| | Inventory | | Residence: Fresno |
| | PTC | | Publication: Fresno Business Journal |
| | Not.Cred. | | |
| | Notice of Hrg | | |
| ✓ | Aff.Mail | w/o | **Estimated Value of the Estate:** |
| ✓ | Aff.Pub. | | Real property - $18,000.00 |
| | Sp.Ntc. | | |
| | Pers.Serv. | | |
| | Conf. Screen | | **Probate Referee: STEVEN DIEBERT** |
| ✓ | Letters | | |
| ✓ | Duties/Supp | | |
| | Objections | | |
| | Video Receipt | | |
| | CI Report | | |
| | 9202 | | |
| ✓ | Order | | |
| | Aff. Posting | | |
| | Status Rpt | | |
| | UCCJEA | | |
| | Citation | | |
| | FTB Notice | | |

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|---|
| **NEEDS/PROBLEMS/COMMENTS:** |
| **Reviewed by: KT** |
| **Reviewed on: 2/8/12** |
| **Updates:** |
| **Recommendation: SUBMITTED** |
| **File 5 - Wilkinson** |



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

**6** **George E. Feist (Estate)** **Case No. 12CEPR00008**

**Atty** **Nahigian, Eliot S. (for Petitioner George Feist)**

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

| | | | |
|---|---|---|---|
| **DOD: 12/2/2010** | | | **GEORGE B. FEIST**, son/named executor without bond, is petitioner.<br><br>Full IAEA – o.k.<br><br>Will dated: 9/26/1979<br><br>Residence: Fresno<br>Publication: Fresno Business Journal<br><br>**Estimated Value of the Estate:**<br>Personal property - $250,000.00<br>Income - $ 4,000.00<br>**Total - $254,000.00**<br><br>**Probate Referee: STEVEN DIEBERT** | **NEEDS/PROBLEMS/COMMENTS:** |
| | | | | |
| | | | | |
| | | | | |
| **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** | | | **Reviewed by: KT** |
| | **Status Rpt** | | | **Reviewed on: 2/8/12** |
| | **UCCJEA** | | | **Updates:** |
| | **Citation** | | | **Recommendation: SUBMITTED** |
| | **FTB Notice** | | | **File 6 - Feist** |



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

**7** **Danny Christopher Thomas (Det Succ)** **Case No. 12CEPR00033**

**Atty** **De Goede, Dale A (for Petitioner Heather B. Thomas)**

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

| | | |
|---|---|---|
| DOD: 10/10/11 | | |
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| | | |
| | | |
| 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 | |

**HEATHER B. THOMAS**, mother, is petitioner.

40 days since DOD.

No other proceedings.

Decedent died intestate.

I & A - $36,000.00

**Petitioner requests** Court determination that Decedent's 100% interest in real property located at 537 E. Daleville in Fresno, 1994 Chevrolet Silverado Pickup and miscellaneous furniture and furnishings pass to her pursuant to intestate succession.

**NEEDS/PROBLEMS/COMMENTS:**

1. **Petition does not indicate anything about the decedent's father who would also be an intestate heir. Probate Code §6402. If decedent's father is deceased, need date of death pursuant to Local Rule 7.1.1D. If decedent's father is not deceased he would need to petition along with decedent's mother under the provisions of Probate Code §13151.**

**Reviewed by: KT**

**Reviewed on: 2/8/12**

**Updates:**

**Recommendation:**

**File 7 - Thomas**



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

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

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

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

| | | |
|---|---|---|
| **DOD: 5-5-09** | | |
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| | | |
| **Cont. from 083011, 101911, 010512** | | |
| | **Aff.Sub.Wit.** | |
| | **Verified** | |
| | **Inventory** | |
| | **PTC** | |
| | **Not.Cred.** | |
| | **Notice of Hrg** | |
| | **Aff.Mail** | |
| | **Aff.Pub.** | |
| | **Sp.Ntc.** | |
| | **Pers.Serv.** | |
| | **Conf. Screen** | |
| | **Letters** | |
| | **Duties/Supp** | |
| | **Objections** | |
| | **Video Receipt** | |
| | **CI Report** | |
| | **9202** | |
| | **Order** | |
| | **Aff. Posting** | |
| | **Status Rpt** | X |
| | **UCCJEA** | |
| | **Citation** | |
| | **FTB Notice** | |

**PAT MIRANDA**, daughter, was appointed Temporary Conservator of the Person and Estate with bond of $30,000.00 on 8-22-03. Bond was filed and Temporary Letters issued on 8-22-03.

Pat Miranda was later appointed general Conservator of the Person and Estate with bond of $30,000.00 and Letters issued on 9-30-03.

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

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

The report states the Conservator has had "problems with her husband rifling through all of her paperwork and forging checks to acquire funds from the Conservator's personal accounts. All of this has been occurring since the death of the Conservatee."

Attorney and Conservator understand the conservatorship has gone on long after the Conservatee's death, but due to serious complications with the Conservator's life, getting the items needed for the accounting was put on the "back burner." Right now, Conservator is unemployed and focusing on saving her house from foreclosure.

Attorney LeVan requested a 45 day continuance and then a 60-day continuance to file the account and petition for termination.

On 1-5-12, Ms. LeVan requested further continuance and the Court continued the matter to 2-16-12.

**NEEDS/PROBLEMS/COMMENTS:**

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

**<u>Status report filed 1-4-12 by Attorney LeVan</u> states that she understands the Court has been very patient regarding this case; however, she has been unable to complete many projects due to medical issues, and her recovery has not progressed as quickly as she had hoped. She expects to be incapacitated until the end of January. The report states the estate was drained of any assets at the Conservatee's death, so there is no estate that is being held up by this delay. She deeply regrets and apologizes that she could not complete the accounting timely.**

**<u>Minute Order 1-5-12</u>: Ms. LeVan is appearing by conference call. Ms. LeVan requests a continuance.**

**<u>As of 2-8-12, nothing further has been filed</u>.**

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

| |
|---|
| **Updates:** |
| **Contacts:** Reviewed 2-8-12 |
| **Recommendation:** |
| **Reviewed by:** skc |
| **File 8 - McCaslin** |

**9 Julia B. Fly (CONS/PE)** **Case No. 08CEPR00917**

**Atty Motsenbocker, Gary L., sole practitioner (for Petitioner Public Guardian, Conservator)**
**Atty Knudson, David, sole practitioner (for Respondent Virginia Greggains, daughter)**
**Atty J. Stanley, Teixeira, sole practitioner (Court-appointed for Conservatee)**

**Status Conference Re: (1) Petition Requesting Relief for Breach of Fiduciary Duty; and (2) for an Accounting and (3) for Conversion of Personal Property and (4) for Elder Abuse and (5) for Damages**

**Age: 89 years**
**DOB: 8/11/1922**

**Cont. from 011212**

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

**PUBLIC GUARDIAN**, Conservator of the Person and Estate, is Petitioner.

**Petitioner states:**

- The Conservatee was at all relevant times a dependent adult under the care, custody and control of Respondent, **VIRGINIA "GINGER" GREGGAINS**, daughter;
- The Conservatee was not competent or capable of handling her personal finances or financial affairs and was entirely dependent upon Respondent to do so for her;
- Respondent had a confidential relationship with the Conservatee and her husband, **ELMER FLY** (DOD 11/8/2008), as their only child;
- Petitioner names **DOES 1 through 30** as Respondents and will amend this petition to allege their true names and capacities when ascertained;
- Petitioner alleges Respondent and the fictitiously named Respondents were each responsible in some manner for the occurrences alleged herein and the damages proximately caused thereby; each of the Respondents were the agent and/or employee of each of the remaining Respondents and each were acting within the course and scope of such agency;
- Elmer and the Conservatee executed a **DECLARATION OF TRUST, ELMER V. AND JULIA B. FLY**, naming Respondent as Successor Trustee; the Trust was amended several times, the latest being the *Third Amendment* dated 3/24/2008 *(copy of Restated Trust and two subsequent amendments attached as Exhibits A, A-1 and A-2)*; Petitioner has no knowledge if there was an intervening amendment between the *Restatement of Trust* dated 9/25/2000 and the *Second Amendment* dated 2/7/2008;
- Respondent has been the sole Successor Trustee of the Trust since December of 2007 or early 2008, and she acted in several matters on behalf of the Conservatee and Elmer using General Durable Powers of Attorney *(copy attached as Exhibit B);*

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

**NEEDS/PROBLEMS/COMMENTS:**

**<u>Continued from 1/12/2012</u>. *Minute Order* states Mr. Knudson informs the Court that he has received the bank statements from Mr. Motsenbocker. Mr. Knudson requests a continuance.**

**<u>Note for background</u>: *Minute Order* dated 10/12/2011 states that Mr. Knudson informs the Court that the Public Guardian is looking to move Ms. Fly to another facility with lower costs. The Court sets the matter for Status Conference on 1/12/2012. Mr. Knudson is to file his written objections.**

**Reviewed by:** LEG
**Reviewed on:** 2/7/12
**Updates:**
**Recommendation:**
**File 9 - Fly**



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

**Petitioner states, continued:**

- Petitioner possesses certain transactional documents and forms which Respondent signed in her capacity as "power of attorney in fact" in which she indicated she held the power for both Conservatee and Elmer, and these transactional documents conclusively establish that Respondent was acting in a fiduciary capacity for Conservatee;
- Petitioner possesses copies of a number of checks written on an account in the names of Conservatee, Elmer, and Virginia "Ginger" Greggains (Respondent); the transactions in this account are the prime source of a number of questionable expenditures made by Respondent from Consevatee's funds; the address on the checks is the personal residence of Respondent; a number of checks were written, signed and made payable to Respondent as well as to Respondent's husband, **STEPHEN ROY GREGGAINS**, each in the amount of **$5,000.00**;
- In early 2008, Respondent contacted **SOUTAS & ASSOCIATES**, a firm engaged in Medi-Cal planning services, and in connection with the consultation, Respondent agreed to purchase an annuity on behalf of Conservatee and signed an application for an annuity with OM Financail Life Insurance on 5/29/2009 of **$159,983.79**;
- On the annuity application, Respondent stated Conservatee held cash and investment accounts valued at **$357,000.00**; the application contains handwritten entries detailing **$82,000** in "Investment Experience and Holdings," **$200,000** in "Money Market" accounts, and **$75,000** in "Other Mutual Funds" accounts;
- As of 9/12/2008, the date of **PUBLIC GUARDIAN'S** appointment as temporary conservator, Respondent surrendered **~$231,000.00** in accounts, and it appears that **$120,000.00** in cash and investments accounts asserted to have existed by Respondent in May 2008 is missing;
- **Respondent should be ordered to account for all of the cash and investment accounts held by Conservatee from 12/1/2007 to the date Respondent surrendered the assets in her possession to the Public Guardian;**
- Respondent arranged for the removal and disposition of jewelry, motor vehicles, household furniture and furnishings, and several personal property items belonging to the Conservatee contained in her personal residence, in anticipation of the sale of the residence by Respondent; Petitioner alleges Respondent personally took and/or made gifts to family members of a number of the items from the residence, she sold some of the personal property at several yard sales, and she did not account to the principals for any of the proceeds or disposition of the items;
- Petitioner alleges that Respondent made gifts of motor vehicles that belonged to the Conservatee to family members without consideration; she removed and disposed of a number of plants growing on the residential property of Conservatee which are believed at the time to be worth thousands of dollars; she used funds belonging to the Conservatee to purchase and make improvements on her own residence, to make the down payment on a personal vehicle for herself, and to pay off a personal loan that she and her husband owned on a travel trailer;
- The Conservatee's financial status at present is tenuous at best; her annuity payments and monthly income are sufficient to fund her care for ~2 years; Petitioner has been unable to modify the annuity payments from the original terms to allow monthly payments, which combined with her income would sustain payments of **$5,625.00 per month** to her residential facility; it is anticipated that additional funds will be necessary to sustain the Conservatee in her present environs.

**Causes of Action:**

1. **Breach of Fiduciary Duty:** Respondent as Successor Trustee owed a fiduciary duty to the Petitioner and Respondent had a duty to exercise the utmost care, integrity, honesty and loyalty in her dealings with Conservatee's property in her capacity as attorney in fact for Conservatee or in her capacity as trustee of Conservatee's Trust; in breach of her fiduciary duty, Respondent deposited Trust funds into her own personal account; she took Conservatee's funds and used them for her own benefit, she took possession of Conservatee's personal property and the proceeds from sale of such property and converted those funds to her own use; the actions of Respondent accrued to the detriment of the Conservatee; Respondent know or should have known that her acts would accrue to the detriment of the Conservatee and that she did all of these acts in patent "bad faith" with the intent of depriving the Conservatee of her property without good and sufficient consideration and in violation of her duty to the Conservatee;
    - Respondent has not rendered an account of her administration of the personal property and funds of Conservatee as required by law, and has not accounted to Conservatee or her legal representative for her actions as to the Conservatee's assets and their disposition; she has provided inaccurate and incomplete information regarding the assets taken for her benefit; **Petitioner requests the Court order Respondent to render a verified detailed account of her handling of the financial and personal affairs of the Conservatee from 12/1/2007 to the present and to serve that account to Petitioner within 90 days of the hearing.**

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

**Causes of Action, continued:**

1. **Breach of Fiduciary Duty, continued:**
   - Respondent owed the Conservatee a duty to act in scrupulous good faith and absolute candor; Respondent breached her fiduciary duty to the Conservatee by failing to preserve the Conservatee's property, failing to deal impartially with the Conservatee's assets, failing to administer the affairs in Conservatee's best interest, failing to keep the Conservatee and her representatives reasonably informed, failing to keep Conservatee's property separate from her own property, converting Conservatee's property to her own use and enjoyment, and failing to maintain cash held on behalf of Conservatee in interest bearing accounts; Respondent should be ordered to respond in damages for each and every breach of fiduciary duty, wrongful act and/or both as provided for in the law;
   - Respondent's acts in this mater constitute breach of fiduciary duty, as she engaged in self-dealing, she breached her duties of loyalty and impartiality, and all acts of Respondent alleged herein were patently unfair and prejudicial to the interest of the Conservatee and her estate; Respondent failed to observe the directions and intent of the Settlors as expressed in their Trust, and all acts of Respondent in regards to the Trust were done "in bad faith" with intent to deprive Conservatee of property to which she is rightfully entitled and constitute breach of trust; **Petitioner alleges Conservatee is entitled to damages with interest as provided in the Code, or in the alternative that Respondent be ordered to pay damages in an amount equal to double the value of all property taken, concealed and/or disposed of by Respondent in bad faith according to proof.**
   - Petitioner alleges Respondent did all of the acts alleged with the intent to deprive the Conservatee of her property while she held a fiduciary relationship with Conservatee, and that any and all actions of Respondent were in violation of her fiduciary duty and **should be adjudged voided and set aside, and the assets or the value of the assets should be ordered returned and any loss incurred should be surcharged against Respondent.**

2. **Conversion:** The acts of Respondent as set forth constitute conversion of the Conservatee's property; Respondent without legal claim, privilege or right seized and disposed of the tangible personal property of the Conservatee, the Conservatee and/or her estate sustained damages thereby equal to the value of the property at the time it was converted by Respondent; **Respondent should be ordered to respond in damages proximately caused by her actions.**

3. **Abuse of an Elderly Person:** For a time period to be proven at trial, but no later than December 2007, the Conservatee was elderly, suffering from diminished mental capacity and was easily subjected to be taken advantage of by designing persons such as Respondents; with knowledge of this, each Respondent schemed to take advantage of the Conservatee and intended to cheat her out of her interest in the property; in furtherance of said scheme, which each Respondent concealed from the Conservatee, each Respondent exercised complete dominion and control over the Conservatee's assets and gained knowledge of her assets and property; the conduct of each Respondent resulted in the deprivation of Conservatee's assets which are necessary for her care and ongoing maintenance;
   - The conduct of each Respondent constitutes financial abuse under Welfare & Inst. Code § 15657 as defined in § 15610.30; each Respondent is guilty of recklessness, oppression, and fraud, and acted with malice against the Conservatee in the commission of the abuse; the conduct of each Respondent was in no way for the benefit of Conservatee and was willful and wanton, and was intended to cause injury to her; **the Conservatee is entitled to an award of exemplary or punitive damages;**
   - **Under Welfare & Inst. Code § 15657(a), each Respondent is liable to the Conservatee for reasonable attorney fees and costs, including reasonable fees for the services of the Public Guardian, as Conservator of her Estate, and their attorney for his services provided to litigate this claim necessitated by conduct of each Respondent**.

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

**Causes of Action, continued:**

4. **Constructive Trust:** Respondent Greggains and the unnamed Respondents each have wrongfully taken, transferred, concealed and otherwise deprived the Conservatee of funds and/or personal property which rightfully belongs to her, and they therefore have become the involuntary trustees of said property for the benefit of the Conservatee; **Respondents should be ordered to surrender and deliver said property to the Conservatee and/or the Petitioner, her legal representative.**

**Petitioner prays the Court Order:**

1. Respondent must render a detailed and correct account for all property held and administered by her, either as Trustee and/or as agent under her power of attorney within 90 days of the date of the initial hearing, for the period from 12/1/2007 to the date she surrendered the Conservatee's funds and property to the Public Guardian;
2. Respondent must respond in damages for all property taken and/or wrongfully appropriated by her, or for funds and/or property that is missing or unaccounted for, together with interest at the legal rate per annum, from the date of the breach of trust and/or fiduciary obligation;
3. Respondent must respond in damages together with interest at the legal rate per annum from the date of breach of trust and/or fiduciary obligation;
4. Respondent and the unnamed Respondents must respond in exemplary damages for their outrageous, recklessness, oppressive, fraudulent and malicious conduct in this matter;
5. In the alternative, Respondents must respond in damages in an amount equal to twice the value of property taken, concealed and/or disposed of by her "in bad faith;"
6. Respondent and the unnamed Respondents must respond in actual damages caused to the Conservatee by their conversion of her tangible personal property;
7. Respondent and the unnamed Respondents are found guilty of elder abuse and are assessed all the damages afforded the Conservatee under the law, including actual damages, exemplary damages, and attorney fees and costs;
8. A Constructive Trust is imposed on all assets taken by the Respondent and the unnamed Respondents for any property and sums the Court determines are rightfully due the Conservatee for their wrongful conduct; and
9. Attorney's fees and costs of suit are awarded as provided for in the law.

**10 Brent William Fleming (CONS/PE)** **Case No. 11CEPR00813**

**Atty Boyett, Deborah K. (for Conservators Diane M. Small and Forrest Brian Fleming)**

**Status Hearing Re: Filing of the Inventory and Appraisal**

| | | |
|---|---|---|
| **Age: 59 years**<br>**DOB: 2/3/1953** | **DIANE M. SMALL** and **FORREST BRIAN FLEMING** were appointed Co-Conservators of the person and estate on 10/17/11.<br><br>Minute order from 10/17/11 set this status hearing for the filing of the inventory and appraisal. | **NEEDS/PROBLEMS/COMMENTS:**<br><br>1. **Need inventory and appraisal or current status report.** |
| | | |
| | | |
| | | |
| **Cont. from** | | |
| Aff.Sub.Wit. | | |
| Verified | | |
| Inventory | | |
| PTC | | |
| Not.Cred. | | |
| Notice of Hrg | | |
| Aff.Mail | | |
| Aff.Pub. | | |
| Sp.Ntc. | | |
| Pers.Serv. | | |
| Conf. Screen | | |
| Letters | | |
| Duties/Supp | | |
| Objections | | |
| Video Receipt | | |
| CI Report | | |
| 9202 | | |
| Order | | |
| Aff. Posting | | **Reviewed by: KT** |
| Status Rpt | | **Reviewed on: 2/8/12** |
| UCCJEA | | **Updates:** |
| Citation | | **Recommendation:** |
| FTB Notice | | **File 10 - Fleming** |



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

## 11 Kaylee Huffstutler (GUARD/P) Case No. 11CEPR00356

**Atty** Ferraro, Serena (Pro Per – Mother – Petitioner)
**Atty** Mekhitarian, Karney Mark (for Julie Ann Weber – Maternal Great-Aunt – Guardian)

**Petition for Visitation**

| | | |
|---|---|---|
| Age: 2 | | |
| DOB: 1-29-09 | | |
| | | |
| | | |
| Cont. from 120111, 011212 | | |
| | Aff.Sub.Wit. | |
| ✔ | Verified | |
| | Inventory | |
| | PTC | |
| | Not.Cred. | |
| | Notice of Hrg | X |
| | Aff.Mail | X |
| | Aff.Pub. | |
| | Sp.Ntc. | |
| | Pers.Serv. | |
| | Conf. Screen | |
| | Letters | |
| | Duties/Supp | |
| | Objections | |
| | Video Receipt | |
| | CI Report | |
| | 9202 | |
| ✔ | Order | |
| | Aff. Posting | |
| | Status Rpt | |
| | UCCJEA | |
| | Citation | |
| | FTB Notice | |

**SERENA FERRARO**, Mother, is Petitioner.

**JULIE ANN WEBER**, Maternal Great-Aunt, was appointed Guardian on 6-30-11.

Father: Kyle Huffstutler
Paternal Grandfather: Brian Huffstutler
Paternal Grandmother: Kathy Huffstutler
Maternal Grandfather: Joseph Ferraro
Maternal Grandmother: Sherri Thompson

**Petitioner requests visitation** twice a week for four hours on Wednesdays and Sundays and the ability to speak to the child by phone twice per day for no less than 15 minutes – before the child starts her day and at bedtime at the end of each day.

Petitioner states Guardian does not answer calls and texts and is ultimately denying her contact with the child because she asked not to pry into her personal life on matters that in no way, shape or form pertain to the child or have any negative effect on the child's safety or well-being.

Petitioner requests to spend much-needed time and continue to be a part of her child's life in a stable and consistent scheduled manner, and thanks the Court for its time.

**NEEDS/PROBLEMS/COMMENTS:**

**Note: This is the 3rd hearing on this Petition for Visitation without notice to the Guardian.**

**Minute Order 12-1-11: Petitioner requests a continuance. Examiner notes provided to Petitioner. Petitioner is directed to cure the defects.**

**Minute Order 1-12-12: Petitioner requests a continuance to allow her to give notice to the guardian. Matter continued to 2-16-12.**

**As of 2-8--12, nothing further has been filed by Petitioner. The following issues remain:**

1. **Need Notice of Hearing.**
2. **Need proof of service of Notice of Hearing at least 15 days prior to the hearing on:**
   - **Julie Ann Weber (Guardian)**
   - **Kyle Huffstutler (Father)**
   - **Brian Huffstutler (Paternal Grandfather)**
   - **Kathy Huffstutler (Paternal Grandmother)**
   - **Joseph Ferraro (Maternal Grandmother)**
   - **Sherri Thompson (Maternal Grandmother)**

**Note: Petitioner submitted a proposed Order; however, if granted, the Court may use minute order only for visitation.**

**Note: Father has supervised visitation four hrs/ week at an agency. The order does not specify the dates/times. The Court may require clarification of this order so that visitation orders do not conflict.**

**Note: There is a Domestic Violence Restraining Order protecting Mother from Father in 09CEFL07447 that expires 5-25-14. Family Court yielded custody and visitation matters between the parents to this Probate Guardianship case until further order of the Court.**

**Reviewed by:** skc
**Reviewed on:** 2-8-12
**Updates:**
**Recommendation:**
**File 11 - Huffstutler**



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

**12 Destiny Cedano, Alexis Cedano, Victor Cedano, Gabriel Cedano, Noah Cedano, Jayden Cedano, Victoria Cedano, Reyna Cedano and Jonah Cedano (GUARD/P)** **Case No. 11CEPR00795**

**Atty Vasquez, Vickie (pro per Petitioner/paternal aunt)**

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

| | | |
|---|---|---|
| Age: 13 years<br>DOB: 2/9/1999 | | |
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| | | |
| Cont. from | | |
| | Aff.Sub.Wit. | |
| ✓ | Verified | |
| | Inventory | |
| | PTC | |
| | Not.Cred. | |
| ✓ | Notice of Hrg | |
| ✓ | Aff.Mail | W/ |
| | Aff.Pub. | |
| | Sp.Ntc. | |
| ✓ | Pers.Serv. | W/ |
| ✓ | Conf. Screen | |
| ✓ | Letters | |
| ✓ | Duties/Supp | |
| | Objections | |
| | Video Receipt | |
| ✓ | CI Report | |
| | 9202 | |
| | Order | |
| | Aff. Posting | |
| | Status Rpt | |
| ✓ | UCCJEA | |
| | Citation | |
| | FTB Notice | |

**THERE IS NO TEMPORARY.**
**No temporary was requested.**

**MICHELLE HERNANDEZ LOPEZ,** paternal cousin, is petitioner.

Father: **VICTOR CEDANO** - *deceased*

Mother: **JENNIFER CEDANO**- *personally served on 12/28/12.*

Paternal grandfather: Jesus Cedano
Paternal grandmother: Jenny Hernandez – *deceased.*
Maternal grandfather: Pete Gutierrez – *deceased.*
Maternal grandmother: Judy Coronado – *served on 12/11/12.*

**Petitioner states** her niece is in need of a guardianship because her mother is in jail and her father is deceased. Social Services is seeking placement of all the children. Petitioner states she already has guardianship of this minor's brother.

**Court Investigator Dina Calvillo's Report was filed 2/3/12.**

**NEEDS/PROBLEMS/COMMENTS:**

**This petition is as to ALEXIS CEDANO only.**

**Petition for Appointment of Guardian for Victoria Cedano and Reyna Cedano (twins age 3) filed by Judy Barbosa and Maximino Barbosa, maternal aunt and uncle was continued to 2/23/12.**

**Guardianship of the other minors has been previously granted to other relatives.**

1. **Need proof of personal service of the *Notice of Hearing* along with a copy of the petition or *Consent and Waiver of Notice* on:**
   a. **Alexis Cedano (minor, age 13)**

| |
|---|
| Reviewed by: KT |
| Reviewed on: 2/8/12 |
| Updates: |
| Recommendation: |
| File 12 - Cedano |



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

**13 Trinity Blessing Daisey Hill (GUARD/P)** **Case No. 11CEPR01063**

**Atty Hill, Brenda Lee (pro per Petitioner/paternal grandmother)**

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

| | | |
|---|---|---|
| Age: 8 months<br>DOB: 5/12/2011 | | |
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| | | |
| Cont. from | | |
| | Aff.Sub.Wit. | |
| ✓ | Verified | |
| | Inventory | |
| | PTC | |
| | Not.Cred. | |
| ✓ | Notice of Hrg | |
| | 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 | |

**Temporary Expires 2/16/12**

**BRENDA LEE HILL,** paternal grandmother, is Petitioner.

Father: **JASPER HILL –** *personally served 12/06/11*

Mother: **PAULINE TARTSAH**

Paternal grandfather: Ottis Legett – *deceased*

Maternal grandfather: Dwayne Tartsah
Maternal grandmother: Veronica Goodwill

Siblings: Kayonna Hill, Jazalina Hill, Mikie (all in foster care)

**Petitioner states** mother has had a problem with alcohol for years. She has had four of her children removed from her care. Father has anger issues and gets out of control while intoxicated. Father is not working and is unable to provide for the minor.

**Court Investigator Samantha Henson's Report filed 2/9/12**.

**NEEDS/PROBLEMS/COMMENTS:**

1. **Need proof of personal service of the *Notice of Hearing* with a copy of *Petition* or Consent and Waiver of Notice or Declaration of Due Diligence on:**
   a. **Pauline Tartsah (mother)**
2. **Need proof of service of the *Notice of Hearing* with a copy of *Petition* or Consent and Waiver of Notice or Declaration of Due Diligence on:**
   a. **Dwayne Tartsah (maternal grandfather)**
   b. **Veronica Goodwill (maternal grandmother)**
3. **Confidential Guardian Screening form is incomplete at #9 and #10. Petitioner answered the questions in the affirmative without explanation.**

| |
|---|
| Reviewed by: KT |
| Reviewed on: 2/8/12 |
| Updates: 2/10/12 |
| Recommendation: |
| File 13 - Hill |



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

**14 Rudy Orona (Estate)** **Case No. 11CEPR01072**

**Atty Orona, Jennie (pro per Petitioner)**

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

| | | |
|---|---|---|
| DOD: 1/11/10 | | |
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| | | |
| Cont. from | | |
| | Aff.Sub.Wit. | X |
| ✓ | 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 | X |
| | Aff. Posting | |
| | Status Rpt | |
| | UCCJEA | |
| | Citation | |
| | FTB Notice | |

**JENNIE ORONA**, spouse, is petitioner and requests appointment as Executor without bond.

Full IAEA – o.k.

Will dated: 9/10/1997

Residence: Fresno
Publication: Fresno Bee

**Estimated Value of the Estate:**

| | | |
|---|---|---|
| Personal property | - | $15,000.00 |
| Real property | - | $53,000.00 |
| **Total** | - | **$68,000.00** |

**Probate Referee: STEVEN DIEBERT**

**NEEDS/PROBLEMS/COMMENTS:**

1. **Will is not self-proving. Need *Proof of Subscribing Witness*.**
2. ***Affidavit of Publication* does not include the name of the petitioner in the portion of the notice that tells interested parties (including creditors) who to direct any correspondences regarding the estate to.**
3. **Rosa Falcon, named alternate executor was not included on #8 of the petition.**
4. **Need proof of service of the *Notice of Petition to Administer the Estate* on Rosa Falcon, named alternate executor. Probate Code §8110.**
5. **Need Order**

| |
|---|
| Reviewed by: KT |
| Reviewed on: 2/8/12 |
| Updates: 2/9/12 |
| Recommendation: |
| File 14 - Orona |



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

**15 Christopher Robles-Ordonez (GUARD/P) Case No. 11CEPR01100**

**Atty Heredia, Rachel (Pro Per – Maternal Great-Grandmother – Petitioner)**

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

| | | |
|---|---|---|
| **Age: 6 months** | | |
| **DOB: 8-10-11** | | |
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| | | |
| | **Aff.Sub.Wit.** | |
| ✔ | **Verified** | |
| | **Inventory** | |
| | **PTC** | |
| | **Not.Cred.** | |
| | **Notice of Hrg** | X |
| | **Aff.Mail** | X |
| | **Aff.Pub.** | |
| | **Sp.Ntc.** | |
| | **Pers.Serv.** | X |
| ✔ | **Conf. Screen** | |
| ✔ | **Letters** | |
| ✔ | **Duties/Supp** | |
| | **Objections** | |
| | **Video Receipt** | |
| ✔ | **CI Report** | |
| ✔ | **Clearances** | |
| ✔ | **Order** | |
| | **Aff. Posting** | |
| | **Status Rpt** | |
| ✔ | **UCCJEA** | |
| | **Citation** | |
| | **FTB Notice** | |

**NO TEMPORARY REQEUSTED**

**RACHEL HEREDIA**, Maternal Great-Grandmother, is Petitioner.

Father: **UNKNOWN**
Mother: **CORINA ORDONEZ**
- *Chowchilla prison*
Paternal Grandfather: Unknown
Paternal Grandmother: Unknown
Maternal Grandfather: Felix Ordonez, Sr.
- *Declaration of Due Diligence filed 12-15-11*
Maternal Grandmother: Priscilla Ordonez
- *Chowchilla prison*

**Petitioner states** both the mother and maternal grandmother are in prison and the father is unknown. Petitioner is the maternal great-grandmother and wants to continue to give Christopher a loving, caring home. Christopher has lived with her since he was two days old.

**Court Investigator Jennifer Young filed a report on 2-8-12.**

**NEEDS/PROBLEMS/COMMENTS:**

1. **Need Notice of Hearing.**

2. **Need proof of personal service of Notice of Hearing with a copy of the Petition at least 15 days prior to the hearing per Probate Code §1511 or consent and waiver of notice on:**
   **- Corina Ordonez (Mother)**
   **- Father (if notice not excused – Declaration of Due Diligence filed 12-15-11 states Mother does not know who the father is.)**

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 or declaration of due diligence on:**
   **- Priscilla Ordonez (Maternal Grandmother)**
   **- Felix Ordonez, Sr. (Maternal Grandfather) (if notice not excused – Declaration of Due Diligence filed 12-15-11 states Petitioner has not seen him for two years, but does not indicate any effort to locate and serve.)**
   **- Paternal Grandparents (if notice not excused)**

**Reviewed by:** skc

**Reviewed on:** 2-8-12

**Updates:** 2-9-12

**Recommendation:**

**File 15 – Robles-Ordonez**



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

**16 Sally Villagran Quemada (CONS/PE)** **Case No. 12CEPR00021**

**Atty Lau, Nancy Quemada (Pro Per – Daughter – Petitioner)**

**Atty Lind, Ruth P. (Court-appointed for Proposed Conservatee)**

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

| | | |
|---|---|---|
| **Age: 86** | | |
| **DOB: 9-17-25** | | |
| | | |
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| | | |
| | **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** | |

**NO TEMPORARY REQUESTED**

**NANCY QUEMADA LAU**, Daughter, is Petitioner and requests appointment as Conservator of the Person with medical consent powers and dementia medication and placement powers, and as Conservator of the Estate without bond.

**Voting rights affected**

**Estimated Value of Estate:**
Personal property: $7,650.00
Annual income: $21,984.00

**A Capacity Declaration was filed 1-5-12.**

**Petitioner states** her mother is diagnosed with Alzheimer's and dementia and suffers from heart problems and anxiety. She was living in her home in Los Angeles County with one of her 15 children, **Mr. Jess Quemada**; however, in November 2008, Petitioner brought her to live with her in Clovis because Mr. Quemada was not properly caring for her. In addition, Petitioner states he was keeping her money and had influenced her to obtain a $40,000.00 loan on one of her homes. An incident (described in the Petition) where an ambulance was called and the driver threatened to contact Adult Protective Services led to the decision to bring her here in 2008. The proposed conservatee has lived with Petitioner in Clovis since 2008 and it is in her best interest to remain so.

**Jess Quemada recently filed for conservatorship in Los Angeles and failed to disclose in his petition that the proposed conservatee has not lived in that county since 2008.**

**SEE PAGE 2**

**NEEDS/PROBLEMS/COMMENTS:**

**Court Investigator advised rights on 1-24-12.**

**Voting rights affected**
**- Need Minute Order**

1. **Petitioner's Request to Waive Court Fees was granted based on income guidelines; however, information received by the Court Investigator indicates that other household income may have been omitted from the Request. The Court has set a hearing for reconsideration pursuant to Government Code §68636 for 2-21-12. If revoked, filing fees are due.**

2. **Petitioner requests appointment without bond; however, pursuant to Cal. Rule of Court 7.207, except as otherwise provided by statute, every conservator of the estate must furnish bond including a reasonable amount for the cost of recovery to collect the bond under Probate Code 2320(c)(4). Bond should be $32,597.40.**

**SEE PAGE 2**

| |
|---|
| **Reviewed by:** skc |
| **Reviewed on:** 2-8-12 |
| **Updates:** 2-9-12 |
| **Recommendation:** |
| **File 16 - Quemada** |



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

**SUMMARY (Continued):**

**Petitioner states** her mother is not able to manage her finances and Petitioner has been handling her money since she came to live with her. She receives Social Security and rental income from one of two homes that she owns. One home is occupied by Jess Quemada, who does not pay rent and claims the house is his.

The proposed conservatee had a personal attorney in Pasadena, Patrick Hanrahan, who prepared her estate-planning paperwork. Petitioner and another sibling, **Yolanda Quemada**, currently have power of attorney (attached POA is dated 9-2-09).

Petitioner states her mother told her that if she could not care for herself, she wanted Petitioner to care for her. Petitioner states that other than the two homes, the estate is minimal.

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**Court Investigator Julie Negrete filed a report on 2-8-12.**

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**3. Petitioner requests the Court waive the Inventory and Appraisal and also waive accountings as long as the estate meets the requirements of Probate Code §2628; however:**

**- Inventory and Appraisal is required by Probate Code §2610**

**- A first accounting *(at least)* is required by Probate Code §2620(a)**

**- Probate Code §2628(c) requires accounting to show that income was spent for the benefit of the Conservatee.**

**- Examiner notes that the proposed conservatee owns two houses (not just her own residence) and receives rental and pension income. Based on this information, it does not appear that the estate would qualify for waiver under Probate Code §2628, as the value of the estate may exceed the statutory limit for waiver.**

**17 Janet Ruth Hartley (Estate)** **Case No. 10CEPR00428**

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

**(1) First and Final Account and Report of Administrator and (2) Petition for Allowance of Ordinary and Extraordinary Commissions and Fees and for (3) Distribution [Prob. C. 9202, 10800, 10810, 10951, 11600, 11850(a)]**

| | | |
|---|---|---|
| DOD: 3/30/10 | | |
| | | |
| | | |
| | | |
| Cont. from 011912 | | |
| | Aff.Sub.Wit. | |
| ✓ | Verified | |
| ✓ | Inventory | |
| ✓ | PTC | |
| ✓ | Not.Cred. | |
| ✓ | Notice of Hrg | |
| ✓ | Aff.Mail | W/ |
| | Aff.Pub. | |
| ✓ | Sp.Ntc. | W/ |
| | Pers.Serv. | |
| | Conf. Screen | |
| ✓ | Letters | 8/25/10 |
| | Duties/Supp | |
| | Objections | |
| | Video Receipt | |
| | CI Report | |
| ✓ | 9202 | |
| ✓ | Order | |
| | Aff. Posting | |
| | Status Rpt | |
| | UCCJEA | |
| | Citation | |
| ✓ | FTB Notice | |

**PUBLIC ADMINISTRATOR**, Administrator, is petitioner.

Account period: 8/18/10 – 11/9/11

| | | |
|---|---|---|
| Accounting | - | **$188,300.00** |
| Beginning POH | - | **$188,300.00** |
| Ending POH | - | **$144,011.78** |
| Administrator (statutory) | - | **$6,319.00** |
| Administrator X/O (per Local Rule for sale of real property, sale of personal property and preparation of taxes) | - | **$3,248.00** |
| Attorney (statutory) | - | **$6,319.00** |
| Bond fee (o.k.) | - | **$588.44** |
| Court fees (certified copies) | - | **$204.00** |

**Distribution, pursuant to intestate succession, is to:**

| | | |
|---|---|---|
| Robert Hartley | - | $42,444.44 |
| David Guy | - | $28,296.30 |
| Robert Guy | - | $28,296.30 |
| Melody McCombs | - | $28,296.30 |

**NEEDS/PROBLEMS/COMMENTS:**

**Continued from 1/19/2012. As of 2/7/12 the following issues remain:**

1. **Need proof of service of the *Notice of Hearing* along with a copy of the petition on Susan Moore pursuant to *Request for Special Notice* filed on 11/29/10.**
2. **Susan Moore represented Robert Hartley, spouse, in his Petition for Probate. Mr. Hartley was appointed as Administrator on 7/14/10 but was unable to bond and letters never issued. The Public Administrator was then appointed as successor Administrator on 8/25/10. It appears that pursuant to Probate Code §10814 Ms. Moore would be entitled to a portion of the statutory attorney fees.**

| |
|---|
| Reviewed by: KT |
| Reviewed on: 2/7/12 |
| Updates: |
| Recommendation: |
| File 17 - Hartley |

**18 Jack H. Boghosian (Estate)** **Case No. 11CEPR01034**

**Atty Kruthers, Heather H (for Petitioner Public Administrator)**
**Atty Bagdasarian, Gary (for beneficiary California Armenian Home)**

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

| | | |
|---|---|---|
| **DOD: 10/18/11** | | |
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| | | |
| **Cont. from 011912** | | |
| | **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** is petitioner.

Full IAEA – o.k.

Will dated: 8/11/1972
Audio Will dated: 9/2/1993

Residence: Fresno
Publication: Fresno Business Journal

**Estimated value of the Estate:**

| | | |
|---|---|---|
| Personal property | - | $464,027.00 |
| Real property | - | $130,000.00 |
| **Total** | **-** | **$594,027.00** |

**Probate Referee: STEVEN DIEBERT**

**NEEDS/PROBLEMS/COMMENTS:**

1. **Petition requests that the Decedent's audio Will dated 9/2/1993 be admitted to probate. Probate Code §6110 states in relevant part "a will shall be in writing." Need authority that allows the court to admit an audio will to probate. –** *Memorandum of Points and Authorities filed on 2/1/2012 by the California Armenian Home.*

2. **The actual audio tape has not been presented to the Court. Attached to the Petition is the transcript of the audio tape. Court may require the actual audio tape to be filed.**

3. **Need proof of holographic instrument for the handwritten notations on the will if the court is going to consider said handwritten notations as a codicil to the decedent's witnessed will.**

4. **# 6 of the Petition is not completed re: who decedent was survived by.**

**Reviewed by: KT**
**Reviewed on: 2/7/12**
**Updates:**
**Recommendation:**
**File 18 - Boghosian**



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

**Memorandum of Points and Authorities in Support of Petition for Probate filed by the California Armenian Home on 2/1/12.**

A holographic codicil may be placed on the face of a witnessed will, and is valid if it meets the requisites of a holographic instrument (written in the testator's hand, dated and signed). [*Estate of Nielson* (1980) 105 Cal.App.3d 796, 802-805] Witkins defines "codicil" as "a later testamentary instrument or entry on an original testamentary instrument that supplements or otherwise affects its validity or terms." [14 Witkin, *Summary of California Law* (10th ed.(2005), Wills, §159]

The handwritten notation of Mr. Boghosian on the face of his witnessed will appears to constitute a holographic codicil, since it appears to be in his handwriting, is dated and signed, and supplements or otherwise affects the validity or terms of his earlier witnessed will.

A holographic codicil may incorporate by reference another writing (formal or informal, attested or unattested) as long as the reference is unmistakable or can be deemed unmistakable by reference to extrinsic evidence. [*In re Foxworth's Estate* (1966) 240 Cal.App.2d 784, 788] The required elements to establish incorporation by reference are: (1) the incorporated writing must be in existence at the time the codicil makes reference to it; (2) the codicil must identify the incorporated writing by a sufficiently certain description, and extrinsic evidence is admissible to aid the identification; and, (3) it must appear that the testator intended to incorporate the writing for the purpose of carrying out his testamentary desires. [id. at pages 788-789]

The handwritten notation of Mr. Boghosian on his witnessed will appears to constitute a holographic codicil that incorporates by reference two separate writings for the purpose of carrying out his testamentary desires.

First, the holographic codicil incorporates the tape recording that Mr. Boghosian specifically identifies and states that he "made" on September 2, 1993 "to supersede" his witnessed will. This establishes the elements of existence, identification and intent. The element of identification is also established by the extrinsic evidence consisting of Mr. Boghosian's handwritten notations on the tape itself, and on the envelope in which his witnessed will and tape were found.

Second, the holographic codicil incorporates Mr. Boghosian's witnessed will by referring to "this will" as the testamentary instrument he sought to "supersede" with the tape recorded instructions.

Finally, the tape recording should be considered a proper matter to be incorporated by reference notwithstanding that case law on the issue generally refers to "documents" being incorporated by reference. Probate Code §6130 governs incorporation by reference, and refers to a "writing" as the type of matter which may be incorporated by reference (not a "document" or "paper"). The Probate Code does not define the word "writing" and does not exclude probate proceedings from the rules of evidence, so the provisions of the Evidence Code may be applied to determine the meaning of the word "writing" used in Probate Code §6130. [Evidence Code §300; and see, *Estate of Nicholas* (1986) 177 Cal.App.3d 1071, 1088]

Evidence Code §250 provides the following definition for the word "writing:'

"'Writing' means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting, by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereby created, regardless of the manner in which the record has been stored."

Tape recordings are considered "writings" under the Evidence Code. [*Darley v. Ward* (1980) 28 Cal.3d 257,261] Since the tape recording made by Mr. Boghosian is a "writing" it is subject to being incorporated by reference in his holographic codicil.

Therefore, request is made that the Will of Jack H. Boghosian dated August 11, 1972 be admitted with the taped testamentary document described in Attachment 3e(2) to the Petition of the Fresno County Public Administrator as the codicil of the Decedent.

**19 Susanna Khalatyan (CONS/PE)** **Case No. 12CEPR00120**

**Atty Khalatyan, Edgar (pro per Petitioner/son)**

**Petition for Appointment of Temporary Conservatorship of the Person and Estate**

| | | |
|---|---|---|
| Age: 59 years<br>DOB: 12/10/1952 | | |
| | | |
| | | |
| | | |
| 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 of the PERSON ONLY granted ex parte on 2/6/12.**

**TEMPORARY EXPIRES 2/16/12**

**GENERAL HEARING 3/19/12**

**EDGAR KHALATYAN**, son, is petitioner and requests appointment as temporary conservator of the person and estate.

**Estimated Value of the Estate:**

| | |
|---|---|
| Personal property - | $130,000.00 |
| Annual income - | $ 4,000.00 |
| **Total -** | **$134,000.00** |

**Petitioner states** the proposed conservatee suffered a large subarachnoid brain hemorrhage and is currently in the ICU at CRMC Fresno.

**Court Investigator Julie Negrete's Report filed 2/7/12.**

**NEEDS/PROBLEMS/COMMENTS:**

**Court Investigator advised rights on 2/6/12**

1. **Petition does not address bond. Pursuant to Probate Code §2320, absent a showing of good cause, requires every conservator be bonded. Based on the information provided bond should be set at $148,280.00.**
2. **Need *Notice of Hearing.***
3. **Need proof of personal service, 5 court days prior to the hearing, of the *Notice of Hearing* along with a copy of the Temporary Petition on:**
   a. **Susanna Khalatyan (proposed conservatee)**
4. **Need proof of service, 5 court days prior to the hearing, of the *Notice of Hearing* along with a copy of the Temporary Petition on:**
   a. **Karine Khalatyan (sister)**
   b. **Nunufar Khalatyan (sister)**
   c. **Miriam Khalatyan (sister)**

**Note:** Capacity Declaration of Dr. Eyad Almasri filed on 2/3/12 is incomplete at #1 & 2, #4a and the physician did not initial at #7b. (The Capacity Declaration does not affect the temporary petition but will need to be addressed prior to the permanent hearing.)

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|---|
| Reviewed by: KT |
| Reviewed on: 2/8/12 |
| Updates: |
| Recommendation: |
| File 19 - Khalatyan |



**Dept. 303, 9:00 a.m. Thursday, February 16, 2012**

**Petition for Order Approving Modification of Trust**

| | | |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| **Continued from 1-18-12** | | |
| | **Aff.Sub.Wit.** | |
| ✔ | **Verified** | |
| | **Inventory** | |
| | **PTC** | |
| | **Not.Cred.** | |
| ✔ | **Notice of Hrg** | |
| ✔ | **Aff.Mail** | W/O |
| | **Aff.Pub.** | |
| | **Sp.Ntc.** | |
| | **Pers.Serv.** | |
| | **Conf. Screen** | |
| | **Letters** | |
| | **Duties/Supp** | |
| | **Objections** | |
| | **Video Receipt** | |
| | **CI Report** | |
| | **9202** | |
| ✔ | **Order** | |
| | **Aff. Posting** | |
| | **Status Rpt** | |
| | **UCCJEA** | |
| | **Citation** | |
| | **FTB Notice** | |

**GEORGIANNE H. ERROTABERE,** Trustee and Beneficiary, and Beneficiaries **DANIEL DOMINGO ERROTABERE, JEAN EMILE ERROTABERE,** and **REMI PHILLIP ERROTABERE**, are Petitioners.

**Petitioners state** the Jean Errotabere Testamentary Trust was created by court order 4-29-1980 and amended by court order dated 6-6-1989.

Petitioner Georgianne H. Errotabere is the original and present trustee, and wishes to resign. The two named successor trustees, Donald Yraceburu and Wells Fargo Bank (successor to Crocker Bank), both indicate that they would decline to serve if appointed, and have both signed declinations (Exhibits B and C).

The trust does not provide mechanism for further appointment. Petitioners seek to modify the trust so that upon the resignation of Georgianne H. Errotabere, the three sons of the trustor and Georgianne H. Errotabere, Petitioners and Beneficiaries Daniel Errotabere, Jean Errotabere and Remi Errotabere are appointed successor co-trustees, with the survivors or survivor thereof serving as co-trustees or sole trustee. Upon the death or resignation of the proposed sole successor trustee, a successor trustee may be chose by the unanimous written consent of the adult beneficiaries and the parents or guardians of minor beneficiaries without court approval.

No bond would be required of any trustee or successor trustee named in or appointed pursuant to the terms of the trust. No other trust provisions would be modified.

All present beneficiaries and all adult contingent beneficiaries consent to the modification pursuant to Probate Code §15403 and waive notice of hearing.

Petitioners also refer to Probate Code §15409 with respect to modification based on changed circumstances, and state that the trustor could not have known over 30 years ago that the two successor trustees would decline to serve.

**Petitioners state that because the present trustee wishes to resign, modification of the trust is necessary to provide mechanism for appointment of successor trustees that is valid and not subject to question, challenge or delay.**

**NEEDS/PROBLEMS/COMMENTS:**

**<u>Note</u>: This matter was originally continued to 3-14-12; however, pursuant to Order Shortening Time for Reconsideration of Petition for Order Approving Modification of Trust, the continued hearing was reset to 2-16-12.**

**<u>SEE PAGE 2</u>**

**Reviewed by:** skc

**Reviewed on:** 2-8-12

**Updates:**

**Recommendation:**

**File 20 - Errotabere**

**20 Jean Errotabere Trust 4/29/1980 (Trust) Case No. 11CEPR01020**

**Atty Owdom, Bruce A. (of Dietrich, Glasrud, Mallek & Aune, for Petitioners)**

**Petition for Order Approving Modification of Trust**

**NEEDS/PROBLEMS/COMMENTS:**

***Note: The following items were previously noted by the Examiner as potential issues. Attorney Owdom's Declaration filed 2-3-12 (noted below) addresses these items:***

1. **Notice was not served on the minor grandchildren of the trustor (contingent beneficiaries) pursuant to Probate Code §17203 and Cal. Rule of Court 7.51(d).**

   **Petitioners state that the interests of the minor contingent beneficiaries are identical to those of the present beneficiares; therefore, they are adequately represented; however, notice (30 days) is still required per the code.**

   ***Note: Examiner notes that the adult grandchildren signed consent to this modification and waivers of notice of this hearing; however, their notice was sent "C/O" their respective parents. Because they each waived notice, this is not an issue; however, for future reference, direct notice is required (not "C/O") per Cal. Rule of Court 7.51(a).***

2. **Probate Code §15602 requires an individual who is not named as a trustee in the trust to give a bond to secure performance, unless excused for compelling circumstances.**

   **Petitioners request to modify the trust under §15403 to name the proposed successor trustees without bond rather than appoint pursuant to §15660.**

   **Petitioners also request that the modified language not require bond for any successor appointed pursuant to the modified terms.**

   **The Court may require bond or clarification regarding compelling circumstances, and/or authority.**

   **If bond is required, need estimated value of trust assets.**

**Attorney Owdom's Declaration filed 2-3-12 states that at the hearing on the petition, Judge Chittick did not require notice to the minor contingent beneficiaries because, as stated in the Petition, they are represented by the adult contingent beneficiaries. However, Judge Chittick expressed the view that Probate Code section 15602 requires bond for proposed successor co-trustees not named in the trust. Attorney Owdom argued that consent of all adult beneficiaries, vested and contingent, should be compelling circumstances which would avoid the requirement of bond. However, Judge Chittick continued the hearing for submission of an estimated value of trust assets for calculation of the bond or reevaluation by the regularly assigned probate judge.**

**Attorney Owdom states that at the time of the hearing the Examiner Notes had not been available and he had not had opportunity to review Probate Code §15602(b) which, in fact, deems request by all adult beneficiaries to constitute a "compelling circumstance" to waive bond.**

**Attorney Owdom further states that the appointment procedure under Probate Code §15660 is not applicable because there is no vacancy, and Petitioner seeks to avoid vacancy by modification of the trust.**

**Mrs. Errotabere is 83 years old and wishes to resign and further delay increases the risk of vacancy in the office of trustee.**