1 George Beckett (CONS/PE) **Case No. 07CEPR01048**

Atty Armas, J. Todd (for Petitioner/Conservator Doris Beckett

Fifth Amended Account and Report of Conservator and Petition for its Settlement

Age: 81 years		
DOB: 1/12/1931		
Cont. from		
	Aff.Sub.Wit.	
	Verified	X
	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	

DORIS BECKETT, spouse/Conservator, is petitioner.

Account period: 11/13/07 – 9/30/11

Accounting	**$129,262.22**
Beginning POH	**$ 22,004.96**
Ending POH	**$ 5,770.60**

Current bond $24,500.00

Conservator - **not addressed**

Attorney - **not addressed**

NEEDS/PROBLEMS/COMMENTS:

Examiner is unable to review these pleadings. The pleadings have incomplete sentences and paragraphs and do not make sense.

Accounting is not verified or signed by the Conservator. Probate Code §1020. Note: the accounting is signed by the attorney. It has not been verified. An attorney cannot verify for a fiduciary therefore the accounting must be verified by the Conservator.

Notice of the Hearing has not been given.

Reviewed by: KT

Reviewed on: 3/2/12

Updates:

Recommendation:

File 1 – Beckett

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

2 Isaac Gamez Special Needs Trust Case No. 07CEPR01097

Atty **Sharon, Randolph M., sole practitioner of Agoura Hills (for Petitioner Wells Fargo Bank, Trustee)**

Petition for Orders Regarding Trustee's Fees

Age: 6 years		
DOB: 2/25/2006		
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	X
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

WELLS FARGO BANK, Trustee of the **ISAAC GAMEZ SPECIAL NEEDS TRUST**, is Petitioner.

Petitioner respectfully requests that the Court authorize it to take interim fees on account in accordance with its normal published fee schedule, based upon the following:

- The *Order Approving Creation of Special Needs Trust* signed 4/15/2008 provides:
  - "The Trustee is entitled to just and reasonable compensation to be determined by the Court, but the Trustee is authorized to make periodic payments on account to itself in the amount specified in its special needs trust fee schedule in existence from time to time, save and except for the following:
    - (A) Payments on account to the Trustee shall be limited to .75% of the fair market value of the Trust assets. This does not limit the Trustee's ability to request payments pursuant to the fee schedule agreed upon by Isaac Gamez' Guardian Ad Litem [Jose Manuel Gamez, Cindy Gamez, and Bruce G. Fagel, APC, per *Order Approving Compromise of Disputed Claim* dated 10/4/2007], as set forth in the *Petition*;
    - The Trustee is not authorized to charge any minimum fee."
- The Trustee's normal published fee schedule *(attached as Exhibit A)* indicates the Trustee's normal published fee is 1.5% on the first **$2,000,000.00**; 1.05% on the next **$3,000,000.00**; .85% on assets over **$5,000,000.00**;

~Please see additional page~

NEEDS/PROBLEMS/COMMENTS:

1. **Need proposed order.**

Reviewed by: LEG	
Reviewed on: 3/5/12	
Updates:	
Recommendation:	
File 2 - Gamez	

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

Bases of Petitioner's request for interim fees on account per fee schedule, continued:

- Pursuant to the *Order [on the First] Account Current of Trustee for the Period of April 1, 2008 to March 31/2009; Approval of Trustee's Fees; Approval of Attorney of Attorney's Fees* dated 3/8/2010, the Court authorized the Trustee to pay itself additional sums, which when added to the sums already received by the Trustee, total the Trustee's normal published fee.
- Pursuant to the *Order for Approval of Second Account Current of Trustee for the Period of April 1, 2008 to March 31, 2009; Approval of Trustee's Fees; Approval of Attorney of Attorney's Fees* dated 7/25/2011 *[signed by Judge Hamilton]*, the Court did not allow any additional fees for services rendered during the period of the Second Account;
- Petitioner respectfully requests that the Court authorize it to take interim fees on account in accordance with its normal published fee schedule, and requests the Court consider the following Trustees' statement concerning the eight factors of **CA Rule of Court 7.776** in determining or approving compensation to the Trustee:
  1. **The gross income of the Trust estate –** During the [Second] Account period, the gross receipts were **$160,224.82** and the gains totaled **$55,294.96**; this was the result of 350 individual transactions that the Trustee was responsible for verifying, receiving and investing.
  2. **The success or failure of the Trustee's administration –** The administration of the Trust during the period of the [Second] Account was successful; Paragraph C (at pages 1 and 2) of the Trust provides that "the intent and purpose of this trust is to provide a discretionary, spendthrift trust, to supplement public resources and benefits when such resources and benefits are unavailable or insufficient to provide for the Special Needs of the Beneficiary." Petitioner respectfully submits that it complied with the said intent and purpose of the Trust by investing the Trust assets, and distributing such assets for the special needs of the Beneficiary.
  3. **Any unusual skill, expertise, or experience brought to the Trustee's work –** The administration of a trust for the benefit of a disabled minor beneficiary requires special skill; the trust officers in charge of this matter have over 30 years' experience in connection with the administration of special needs trusts.
  4. **The fidelity or disloyalty shown by the Trustee –** The Trustee had administered this Trust with fidelity and loyalty to the Beneficiary.
  5. **The amount of risk and responsibility assumed by the Trustee –** The Trust has assets of over **$1,000,000.00**. State and Federal Bank regulating authorities require that a corporate fiduciary set appropriate investment objectives based upon the needs of the Beneficiary; Petitioner has complied with said requirements; Petitioner was responsible for the investment of the Trust assets, as well as insuring that all necessary and appropriate disbursements have been made according to the terms of the Trust; in addition, Petitioner was responsible for federal and state fiduciary income tax returns and the subject accounting to the court; Petitioner maintains a computer system, which provides daily investment balances for each account and which list the transactions occurring daily; the Petitioner's administrator reviews each report to determine if action needs to be taken; Petitioner maintains files for correspondence, bills and receipts, tax, investments and legal documents.
  6. **The time spent in the performance of the Trustee's duties –** Petitioner does not keep time records of its time spent on this matter; Petitioner believes that virtually all of the corporate Trustees of Special Needs Trusts or Settlement Trusts receive their fees on a percentage of the assets under management; none of these institutions charge on an hourly basis for their regular trust services, and if required to do so, would most likely resign; by charging a percentage of the assets, this frees the Beneficiary and his family from concerns regarding being assessed a fee charged to the Trust every time a call or request is made.

~Please see additional page~

Bases of Petitioner's request for interim fees on account per fee schedule, continued:

7. **The custom in the community where the court is located regarding compensation authorized by settlors, compensation allowed by the court, or charges or corporate trustees for trusts of similar size and complexity –** The published fee schedules related to the administration of trusts of **Westamerica Bank** *[1.50% on the First $1,000,000.00; 1.25% on the Next $1,000,000.00; 1.00% on asset values above $2,000,000.00]*; **Bank of the West** *[1.30% on the First $1,000,000.00; 1.15% on the Next $1,000,000.00; .90% the Next $3,000,000.00; .70% on the Next $5,000,000.00; negotiated balances for greater than $10,000,000.00]*; **US Bank** *[1.35% on the First $1,000,000.00; .85% on the Next $2,000,000.00; .70% the Next $2,000,000.00; .60% on the balance of assets;*]; **Citizens Business Bank** *[1.50% annual fee based on market value; annual minimum fee is $7,500.00];* **Merrill Lynch** *[1.25% on the First $1,000,000.00; 1.00% on the Next $1,000,000.00; .80% the Next $2,000,000.00; .70% on the Next $6,000,000.00; .60% on more than $10,000,000.00];* **City National Bank** *[1.20% on the First $1,000,000.00; 1.00% on the Next $4,000,000.00; .65% the Next $5,000,000.00; .50% in excess of $10,000,000.00;]* and **Northern Trust** *[1.85% on the First $1,000,000.00; 1.65% on the Next $2,000,000.00; 1.50% the Next $2,000,000.00; accounts over $5,000,000.00 will be priced on a negotiated basis] (attached as Exhibit B)* show clearly that it is the custom of the community to charge percentage compensation; and that the amount charged by the Petitioner is what is typically charged by other financial institutions;
8. **Whether the work performed was routine, or required more than ordinary skill or judgment –** Petitioner believes that the administration of trusts for the benefit of disabled beneficiaries are generally far more complex and involve substantially more time than other inter vivos or testamentary trusts.

- For all of the above reasons, Petitioner respectfully requests that the Court allow the Trustee to pay itself fees on account in accordance with its normal published fee schedule;
- Petitioner is unwilling to continue to serve as Trustee based on a Trustee fee of .75%, which Petitioner respectfully submits is an inadequate fee;
- Petitioner respectfully submits that if the Court were to appoint a private professional fiduciary, the cost of bond (which is not required where a bank is serving as Trustee) and the investment fee (which is typically in excess of 1.0%) is likely to exceed the Trustee's normal published fee, without even taking into account the amount charged by the private professional fiduciary;
- If the Court is unwilling to increase the Trustee's fee to its normal published fee, Petitioner tenders its resignation and requests that the Court accept its resignation and appoint a successor trustee.

Petitioner prays for an Order of the Court:

1. That the Trustee is authorized to take interim fees on account in accordance with its normal published fee schedule; or in the alternative
2. That the Court accepts the Petitioner's resignation as Trustee and appoints a successor trustee.

3 The Anderson Family Living Trust Case No. 09CEPR01013

Atty Keeler, William (for Donna Hanneman – Trustee)
Atty Martinez, Vincent T. (for David Anderson, John Anderson, and Joy Jackman –Petitioners)

Petition for Distribution of Trust Income and Principal; Memorandum of Points and Authorities in Support Thereof

Age:		
DOD:		
Cont. from		
	Aff.Sub.Wit.	
	Verified	x
	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	x
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

DAVID ANDERSON, JOHN D. ANDERSON, AND JOY ANDERSON JACKMAN, beneficiaries, are Petitioners.

Petitioners request a Court order:
1) instructing Trustee Donna Hanneman ("Trustee") to distribute trust income and principal of the Exemption Trust pursuant to the terms of the Anderson Family Living Trust dated 11/23/92 ("Family Trust") and
2) removing Trustee as the Trustee of the Exemption Trust and appointed Petitioner Joy Anderson Jackman as Successor Trustee of the Exemption Trust, pursuant to the terms of the Family Trust.

I. Petitioners' Request for Order to Instruct Trustee to Distribute Exemption Trust Income and Principal

Petitioners state:

1. They are 3 of the 6 Family Trust beneficiaries *(Copies of the Family Trust and Amendments 1-4 are attached to Petition);*
2. Trust John Anderson died 12/15/95, at which time the Family Trust was split into the Marital Trust and the Exemption Trust;
3. Surviving Settlor Edna Anderson made several amendments to the Marital Trust during her lifetime, and she died on 7/19/09;
4. Petitioners have made several requests to the Trustee to distribute the Trust income and principal according to the Family Trust, however, Trustee has failed to distribute said income;
5. The corpus of the Exemption Trust, at the time of Edna's death, consisted of mutual funds, commercial real estate and a promissory note, as well as a checking account held at Wells Fargo Bank;
6. Petitioners therefore request the Court order Trustee to comply with the terms of the Family Trust and distribute the Exemption Trust income to its beneficiaries.

SEE ATTACHED PAGE

NEEDS/PROBLEMS/COMMENTS:

1. **Petition is not verified by Petitioners.**
2. **Need Order.**

Reviewed by:	NRN
Reviewed on:	3/2/12
Updates:	
Recommendation:	
File 3 - Anderson	

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

II. Petitioners' Request for Removal of Trustee and Appointment of Petitioner Joy Jackman as Successor Trustee

Petitioners state:

1. Trustors John and Edna ("Trustors") appointed 3 separate individuals as successor trustees of the Family Trust in the event of Trustors' deaths;
2. Trustors did not appoint Donna Hanneman as a successor trustee of the Exemption Trust;
3. After John's death in 1995, Edna made changes to the Marital Trust and appointed Donna Hanneman as Successor Trustee of the Marital Trust;
4. Since Edna's death in 2009, Donna Hanneman has been acting as the Successor Trustee of both the Marital and Exemption Trust;
5. Trustee submitted an accounting of the Exemption Trust for the period of 7/19/09 through 4/30/11; Schedule D of that accounting shows no income or principle distributions to the Exemption Trust beneficiaries in over two years;
6. Per the Family Trust terms, Kaye Cooper was to have been appointed as first successor trustee of the Exemption Trust;
7. Kaye Cooper passed away on 10/26/09;
8. Therefore, Richard Cooper should have been appointed, pursuant to the Family Trust; if Richard Cooper was unable or unwilling to act, then Petitioner Joy Anderson Jackman should have been appointed;
9. Instead, Donna Hanneman has been acting as the Successor Trustee since 2009; this is erroneous as she was not originally appointed as such by the Trustors'
10. Therefore, Trustee Hanneman should be removed as Trustee of the Exemption Trust and either Richard Cooper or Petitioner Joy Anderson Jackman appointed (***note: the prayer specifically requests that Joy Anderson Jackman be appointed***).

4 Lora S. Wilson (Estate) Case No. 11CEPR00315

Atty **Boyajian, Thomas M. (for Sally Kathleen Ellis – Daughter – Administrator)**

(1) Petition for Final Settlement and Final Distribution, Waiver of Account, Waiver o Statutory Fees for Administrator, and (2) for Allowance of Fees for Attorney (Prob. C. 11600, 10800, 10810, 10831, 10951, 10954)

DOD: 12-2-10		
	Aff.Sub.Wit.	
✔	**Verified**	
✔	**Inventory**	
✔	**PTC**	
✔	**Not.Cred.**	
N/A	**Notice of Hrg**	
N/A	**Aff.Mail**	
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
✔	**Letters**	5-17-11
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
✔	**9202**	
	Order	X
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
✔	**FTB Notice**	

SALLY KATHLEEN ELLIS, Daughter and Administrator with Full IAEA without bond, is Petitioner.

Accounting is waived.

I&A: $125,000.00
POH: $125,000.00 (real property only)

Administrator (Statutory): Waived

Attorney: $3,500.00 (Less than statutory)

Distribution pursuant to intestate succession:

Sally Kathleen Ellis: Entire estate consisting of real property only

NEEDS/PROBLEMS/COMMENTS:

1. **Need order.**

Reviewed by: skc
Reviewed on: 3-2-12
Updates:
Recommendation:
File 4 - Wilson

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

5 Levon Goode (Estate) Case No. 11CEPR00426

Atty **Tomassian, Gerald M. (for Marianne Goode and Joyce L. Serpa – Co-Executors)**

(1) Waiver of Accounting and (2) Petition for Final Distribution Under Will and for (3 Allowance of Statutory Attorney's Fees (Prob. C. 11640, 10810)

DOD: 4-5-11		
	Aff.Sub.Wit.	
✓	Verified	
✓	Inventory	
✓	PTC	
✓	Not.Cred.	
✓	Notice of Hrg	
✓	Aff.Mail	W/O
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
✓	Letters	6-28-11
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
✓	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
✓	FTB Notice	

MARIANNE GOODE and JOYCE L. SERPA, Daughters and Co-Executors with Full IAEA without bond, are Petitioners.

Accounting is waived.

I&A: $148,316.59
POH: $148,426.78

Co-Executors (Statutory): Waived

Attorney (Statutory): $5,449.50

Closing: $500.00

Distribution pursuant to Decedent's will:

Marianne Goode and Joyce L. Serpa as Successor Trustees of the Levon Goode Revocable Living Trust Agreement dated 9-9-10: $142,477.28

NEEDS/PROBLEMS/COMMENTS:

Reviewed by: skc
Reviewed on: 3-2-12
Updates:
Recommendation: SUBMITTED
File 5 – Goode

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

6 **Helen Katherine Costa (Estate)** **Case No. 11CEPR00537**

Atty **Willet, James A. (for Susan M. Fleming – Executor – Petitioner)**

(1) First and Final Report of Executor on Waiver of Accounting and (2) Petition for Final Distribution of Estate and (3) for Order Authorizing and Directing Payment of Statutory Executor's Compensation and Statutory Attorneys' Compensation and Costs

DOD: 6-3-11		
	Aff.Sub.Wit.	
✔	**Verified**	
✔	**Inventory**	
✔	**PTC**	
✔	**Not.Cred.**	
✔	**Notice of Hrg**	
✔	**Aff.Mail**	W
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
✔	**Letters**	8-4-11
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
✔	**9202**	
✔	**Order**	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
✔	**FTB Notice**	

SUSAN M. FLEMING, Executor with Full IAEA without bond, is Petitioner.

Accounting is waived.

I&A: $824,519.34
POH: $823,260.26 (cash and securities)

Executor (Statutory): $18,927.36

Attorney (Statutory): $18,927.36

Costs: $894.00 (filing, publication, certified letters, appraisal, etc.)

Distribution pursuant to Decedent's will and codicils:

Equal shares to Susan M. Fleming, Mimi S. Rogers, and Stephen H. Schmid

NEEDS/PROBLEMS/COMMENTS:

1. **If the non-cash assets (securities, etc.) are to be distributed in undivided interests, need written agreement for such distribution pursuant to Local Rule 7.12.3.**

2. **Need revised order pursuant to Local Rule 7.6.1.A. Monetary distributions must be stated in dollars.**

Reviewed by: skc

Reviewed on: 3-2-12

Updates:

Recommendation:

File 6 - Costa

7 Virgil A. Lininger Irrevocable Trust **Case No. 11CEPR00828**

Atty Laird, Scott D. (of Wanger Jones Helsey PC, for Sarah Nardone)

Atty Sanoian, Joanne (for Robert Jones, Conservator, and Virgil A. Lininger, Conservatee)

Notice for Ex Parte Hearing and Petition for Order Dissolving Temporary Restraining Order, and Petition to Appoint Independent Counsel

Virgil A. Lininger (93)
DOB: 10-12-1918

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

SARAH NARDONE, Trust Beneficiary ("Respondent"), is Petitioner herein.

Background: ROBERT JONES, Nephew and Conservator of the Person and Estate of **VIRGIL A. LININGER**, ("Petitioner") together with **VIRGIL A. LININGER**, filed a Petition to Invalidate Irrevocable Trust on 9-14-11. **The hearing on the petition has been continued to 4-10-12.**

On 12-22-12, the Court granted Petitioner's ex parte application for temporary restraining order pending the outcome of the evidentiary hearing on the petition to invalidate the trust that prohibits **SARAH NARDONE** from making any contact with **VIRGIL A. LININGER** until the outcome of the evidentiary hearing on the Petition to Invalidate Irrevocable Trust.

Respondent states: This petition is based on Code of Civil Procedure Sections 527 and 528 on the grounds that the temporary restraining order was improperly issued for an indefinite period of time without an order to show cause and is void as a matter of law, and on the grounds that Ms. Sanoian, counsel for Virgil Lininger, has an irreconcilable conflict of interest.

On 12-22-11, the Court granted Petitioner's request for a temporary restraining order without issuing an Order to Show Cause why a preliminary injunction should not issue setting a hearing within 15 days. As such, because the temporary restraining order was issued without an Order to Show Cause, thereby depriving Respondent with her rights to due process and an opportunity to be heard, the temporary restraining order is void. Since a noticed motion cannot be heard for over 45 days and Respondent has been denied her rights to due process under a void order, ex parte application is appropriate.

Memorandum of Points and Authorities in Support of Ex Parte Petition for Order Dissolving Temporary Restraining Order; and Petition for Court to Appoint Independent Counsel filed 2-7-12 states:

SEE PAGE 2

NEEDS/PROBLEMS/COMMENTS:

1. **Proof of service filed 2-8-12 reflects mailing of applicable documents only to Petitioners' attorney Joanne Sanoian.**

   Examiner notes that the *mandatory* Judicial Council form "Notice of Hearing – Probate" (DE-120) was not used and the parties were not served directly pursuant to Probate Code §§ 1211 and 1214, and Cal. Rule of Court 7.51.

Reviewed by: skc

Reviewed on: 3-5-12

Updates:

Recommendation:

File 7 - Lininger

Intro/Summary: Respondent states the TRO issued without a hearing and on an ex parte basis before Respondent could even get an opposition filed must be dissolved. An Order to Show Cause hearing must follow the issuance of a Temporary Restraining Order. Because the Court did not issue an Order to Show Cause returnable within 15 days and set hearing as required by C.C.P. §527(d)(1), thereby depriving Respondent of her due process, the Temporary Restraining Order is void and must be dissolved *[emphasis in original]*.

Respondent states that well after Virgil established the trust for Sarah, Virgil's nephew Robert Jones filed for conservatorship. Attorney Joanne Sanoian, as court-appointed independent counsel, represented Virgil in the conservatorship petition and was adverse to Robert Jones as petitioner therein. Attorney Sanoian now represents Robert Jones *and* Virgil in this action.

Respondent states that in the conservatorship case, Attorney Sanoian submitted a declaration stating Virgil was resolute and that the trust not be disturbed. The result of the conservatorship case was a Mutual Release and Settlement Agreement wherein: 1) Robert would become Virgil's conservator; 2) Virgil would not oppose, interfere, object, resist, or contest any legal action brought or filed by Petitioner to revoke the trust established in favor of Sarah, and 3) all funds recovered from the trust would be deposited in Trust A – Survivor's Trust of the Virgil A. Lininger and Katherine E. Lininger Revocable Trust dated September 15, 2004 ("Trust A"). Now, Ms. Sanoian, representing both Robert and Virgil, seeks to revoke the trust, contrary to Virgil's clearly expressed wishes. Under the circumstances, the Court should appoint independent counsel for Virgil.

Parties/Pleadings: Respondent Sarah states she and Virgil were and are close personal friends who traveled together extensively and spent extended periods of time together, and Sarah is the beneficiary of the Virgil A. Lininger Irrevocable Trust created 1-20-11.

After settling the conservatorship petition, Petitioner filed a petition to invalidate the trust. Respondent objected. Petitioner then filed an ex parte application for the temporary restraining order enjoining Sarah from contacting Virgil until the outcome of the evidentiary hearing on the petition to invalidate the trust and enjoining Sarah from taking any action, in the event of the demise of Virgil, to claim the assets held. Petitioner based the TRO on the grounds that Sarah may attempt to influence Virgil regarding the pending action.

The judge granted the indefinite temporary restraining order without a hearing and before Respondent could even get an opposition on file. However, the Court did not issue, nor did the Petitioner request, an Order to Show Cause Why a Preliminary Injunction should not be granted. There was no hearing on a preliminary injunction. In addition, the Court granted the Ex Parte TRO without any finding of great or irreparable injury that would result to Virgil before the matter could be heard on notice.

Legal Analysis: Ex Parte relief is appropriate with reference to *In re Berry* (1968) 68 Cal. 2d 137, 148-149. While confident that that TRO was issued by this court in excess of its jurisdiction and is therefore void, Respondent has decided to challenge its validity rather than violating its terms. However, since 12-22-11, Respondent's liberty and freedom of association have been enjoined and her rights to due process violated pursuant to the terms of a void order. Since noticed motion cannot be heard for 45 days and Respondent's constitutional rights have already been violated for 45 days, ex parte relief is appropriate.

The Court's issuance of the TRO was improper and would have only been effective until a hearing on the preliminary injunction on an order to show cause pursuant to Code of Civil Procedure §528. A temporary restraining order is issued through the procedure set forth in C.C.P. §527 and is only temporary until Respondent can be heard after being served with an order to show cause.

SEE PAGE 3

Respondent cites *Landmark Holding Group v. Superior Court* (1987) 193 C.A.3d 525, 529): "The issuance of the temporary restraining order does not determine the merits of the controversy. The order merely maintains the status quo until the hearing on the application for the preliminary injunction."

- Cal. Rules of Ct., 3.1150(a): An order to show cause must be used when a temporary restraining order is sought.
- C.C.P. §527(d)(1): After a TRO is granted, the matter must be made returnable on an order to show cause why a preliminary injunction should not be granted on the earliest date the court can hear the matter but not later than 15 days from the date the TRO is issued.
- *McDonald v. Superior Court* (1937) 18 Cal. App. 2d. 652, *Agricultural Prorate Commission v. The Superior Court of Riverside County* (1939) 30 Cal. App. 2d 154, 155): If an order to show cause is set for hearing beyond this statutory time period, the order to show cause is void. (Court was without jurisdiction to hear or determine application for injunction for the reason that the order to show cause was issued beyond statutory deadline.)

The Court granted Petitioner's request and issued TRO without a hearing; however, unlike the cases cited above where an OSC was issued, albeit outside the statutory deadline, and contrary to the statutory framework enacted to provide Respondent with due process, the Court did not even issue an OSC in this case. The Court allowed Petitioner to circumvent a very important step, allowing Respondent to be heard after being served with an OSC to allow Respondent to respond with her own evidence and defense before being ordered to refrain from contacting Virgil or accessing approx. $750,000.00 should Virgil pass during this action.

Under C.C.P. §527, Respondent has a right to present affidavits and have an opportunity to be heard. This is the due process that is required before restraining Respondent's conduct and potentially her rightful access to the trust corpus, and she was denied that due process. The court lacks the jurisdiction to issue any TRO longer than the prescribed 15 days. Therefore, the court lacked the power to make such an order, and the TRO is void and should therefore be dissolved.

Respondent further requests that the Court appoint independent counsel for Virgil Lininger in this litigation. In her advocacy for Mr. Lininger in the conservatorship case, Ms. Sanoian clearly expressed and advocated his unequivocal desire and wish that the trust that is the subject of this litigation not be disturbed. Now, she is taking the exact opposite position and on behalf of Petitioner Jones is seeking to revoke the trust. If Lininger is in a weakened mental or physical state, there is no way his true wishes can be validated with the same lawyer representing him and also representing Jones.

Further, there appears to be actual conflict of interest between Virgil and Petitioner: In the conservatorship proceeding, Virgil expressed his desire to keep the trust intact for the benefit of Sarah. At this time, Ms. Sanoian was Virgil's counsel. As part of the Settlement Agreement in the conservatorship proceeding, all funds recovered from the trust will be deposited to Trust A.

Respondent believes that Petitioner is one of the beneficiaries of Trust A. Ms. Sanoian is representing both Virgil and Petitioner in this proceeding. Therefore, there is an actual conflict of interest between what Virgil has stated that he desires and the pecuniary interest of her other client, Petitioner herein.

Conclusion: Respondent was denied her due process rights when the court granted the TRO without providing an opportunity to be heard. Petitioner did not follow the statutory procedure, and a TRO must be issued with an OSC. Therefore, the order is void and should be formally dissolved by the Court.

It is clear that Ms. Sanoian cannot represent the interests of both Petitioner and Virgil in this matter. There is an actual conflict between the two parties' interests. Respondent respectfully requests the Court appoint independent legal counsel for Virgil.

SEE PAGE 4

Supplemental Objection to Nardone's Ex Parte Petition for Order Dissolving Temporary Restraining Order; and Petition to Appoint Independent Counsel for Virgil Lininger filed 3-8-12 states:

Nardone mistakenly argues that pursuant to CCP 527(d)(1) and Rules of Court 3.1150(a) the TRO granted 12-22-11 should be voided because an order to show cause was not set within the prescribed period of time.

CCP 527(d)(1) does not apply in this case. CCP 527(d)(1) states:
"(d) In case a temporary restraining order is granted without notice **in the contingency specified in subdivision (c):**
(1) The matter shall be made returnable on an order requiring cause to be shown why a preliminary injunction should not be granted, on the earliest day that the business of the court will admit of, but not later than 15 days or, if good cause appears to the court, 22 days from the date the temporary restraining order is issued." (emphasis added)

Subdivision (c) then states that "That for reasons specified the applicant should not be required to so inform the opposing party or the opposing party's attorney."

On 12-20-11, Nardone's counsel was informed via telephone call at 9:25 am and again via email at 10:00 am of the date, time, and place the ex parte application would be made, and the specific nature of the relief sought (See paragraphs 1-3 of the filed Declaration of Maria Vega Regarding Notice of Ex Parte Application for Temporary Restraining Order Pending Outcome of the Hearing (copy attached).

A copy of the ex parte application for the TRO and all documents filed with it were faxed to Nardone's counsel on 12-21-11. Petitioner did in fact give notice pursuant to CCP 527(c)(2)(A).

Since Nardone's counsel was given notice of the date, time and place of the TRO application pursuant to the above requirements, then subdivision (c) does not apply and therefore we do not look to subdivision (d)(1).

CRC 3.1150(a) also does not apply to this matter. That rule states that "[a] party requesting preliminary injunction may give notice of the request to the opposing or responding party either by being served a noticed motion under Code of Civil Procedure section 1005 or by obtaining and serving an order to show cause (OSC)."

Petitioner did not request a preliminary injunction in this matter; Petitioner filed an ex parte application for temporary restraining order pending the outcome of the hearing.

Nardone should have looked to CFC 3.1150(g) as it applies specifically to Application for Ex Parte Restraining Orders and states that "[a]pplications for ex parte temporary restraining orders are governed by the ex parte rules in chapter 4 of this division.

Pursuant to chapter 4, the parte seeking the ex parte order has to notify the parties no later than 10:00 am the court day before the application is made. On 12-20-11, Nardone's counsel was informed via telephone call at 9:25 am and again via email at 10:00 am of the date, time and place the ex parte application would be made, and the specific nature of the relief sought. A copy of all documents filed was faxed to Nardone's counsel on 12-21-11.

Nardone's counsel had notice pursuant to the above requirements, and Petitioner satisfied all of the ex parte notice requirements pursuant to CRC 3.1150(g), 3.1203 and 3.1204. The court found that the facts in this matter warranted the granting of the TRO in December 2011 and those facts have not changed.

SEE PAGE 5

Nardone's argument that her "liberty and freedom of association have been enjoined" since the issuance of the TRO is nonsensical. Petitioner is unclear as to what freedoms and liberty she has exactly lost. Nardone cannot access funds while Virgil is still living and her counsel agreed to stipulate not to take any action relative to the assets of the trust. Petitioner is confused as to why Nardone believes she has the freedom and right to have contact with Virgil when he is under a conservatorship and stated he didn't want to see her. Furthermore, she has not seen him since 2-14-11 and has made no attempts to visit him before the TRO was signed.

"The clear purpose of the restraining order is to hold the subject of litigation *in status quo* until its final determination." (*Marolda v. La Piner* (1947) 81 Cal. Appl. 2d 742, 745)

Since Nardone could not access the funds from the trust and did not attempt to contact Virgil prior to the TRO being signed, the TRO does in fact maintain the status quo and should remain in effect.

Regarding Petition for appointment of independent counsel:

Joanne Sanoian was court-appointed and continues to be counsel for Virgil in the conservatorship proceedings. In Virgil's declaration, he states he objects to appointment of independent counsel and wants Attorney Sanoian to remain as his attorney in this matter.

Virgil is not a party to this action and agreed that the conservator could file the current proceedings to revoke the trust. Nardone insinuates that the settlement agreement does not represent Virgil's desires. Virgil signed the settlement agreement with the independent advice of his court appointed counsel and of his own free will.

Virgil was deemed unavailable as a witness for all purposes by this court on 1-13-12.

Nardone makes an argument that due to some "irreconcilable" conflict, Sanoian can no longer represent Virgil, yet she never explains why or cites any law. Nardone makes various incorrect assumptions in her argument. As stated above, Virgil is neither a party nor witness in this proceeding. Petitioner and Virgil both agreed to initiation of the petition in this proceeding, agreed to the establishment of conservatorship, and agreed to the TRO. There is no current conflict. Virgil was an attorney for over 42 years and stated that he fully understands the "potential conflict" that may arise from Joanne Sanoian's representation of him in both proceedings, but explained that he has no objection to Joanne Sanoian continuing to represent both him and the conservator.

Conclusion: Because Petitioner and the Court followed all propert statutes and procedures at the time Petitioner's ex parte application for TRO was presented to and signed by the Court, the TRO should remain in effect and Petitioner requests that Nardone's petition for an order dissolving the TRO be denied in its entirety.

Virgil Lininger is neither a witness nor a party to this action and clearly accepts Attorney Sanoian as his counsel in the conservatorship action. Petitioner requests that Nsardone's petition for appointment for Virgil Lininger in this action also be denied in its entirety.

8A **Re: Jeri L. Shubin 2007 Trust (Trust)** **Case No. 11CEPR01018**

Atty **Keeler, William J. (for Roberto Garcia – beneficiary/Petitioner)**

Atty **Phillips, John W. (for Evelyn Lauderdale – Trustee)**

Petition to Remove Trustee and for Appointment of Successor Trustee; (2) for Surcharge of Trustee; (3) for Order directing Trustee to Return Trust Property to Trust; (4) and for Order Compelling Trustee to Account and Report [Prob. C. §§ 850, 15642, 16064, 17200(b)]

DOD: 06/29/11

Cont. from 01/10/12, 022812

	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	

ROBERTO GARCIA, Trust Beneficiary, is Petitioner.

Petitioner states:

1. Decedent created the Jeri L. Shubin 2007 Trust (the "Trust") and a pour-over Will on August 23, 2007;
2. Decedent amended the Trust on July 1, 2009 (the "First Amendment");
3. Decedent amended the Trust a second time on December 15, 2009 (the "Second Amendment");
4. Decedent amended the Trust a third and final time on December 13, 2010;
5. Decedent died on June 29, 2011, at which time the Trust became irrevocable;
6. Petitioner is a named beneficiary of the Trust and also was nominated as second successor trustee in the Third Amendment to the Trust;
7. Petitioner states that Evelyn Lauderdale is the current acting trustee;
8. Petitioner states that Evelyn Lauderdale is a contingent beneficiary only, in that she succeeds to the personal property of the Trust only in the event the decedent did not leave a letter of instructions governing the distribution of such property;
9. Petitioner states that Evelyn Lauderdale was present when decedent discussed her estate planning with her attorney as was aware that she was solely a contingent beneficiary and successor trustee of the Trust;
10. Petitioner states that Evelyn Lauderdale was a co-owner of a Chase bank account with the decedent due to the decedent needing assistance in paying bills as her health declined;
11. Petitioner states that decedent owned investment accounts with Merrill Lynch, John Hancock, and Wells Fargo Financial either individually or in her capacity as trustee of the Trust and Petitioner understands that certain individuals, including the Petitioner, were pay-on-death beneficiaries of one of more of these accounts;
12. Petitioner states that Evelyn Lauderdale was not an authorized signer on any of these accounts;

See Page 2 for more information

NEEDS/PROBLEMS/COMMENTS:

<u>CONTINUED FROM 02/28/12</u>
As of 03/06/12, no new documents have been filed.

<u>Notes</u>:
Consent of Bruce Bickel to serve as neutral third party trustee was filed on 02/01/12.

Reviewed by: JF

Reviewed on: 03/06/12

Updates:

Recommendation:

File 8A - Shubin

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

13. Petitioner states that in or around May 2011, while the decedent was in the hospital, Evelyn Lauderdale went to Merrill Lynch, John Hancock, and Wells Fargo Financial, and using a durable power of attorney signed by decedent, transferred between $150,000.00 - $250,000.00 from the decedent's investment accounts into the Chase account she co-owned with the decedent;
14. Petitioner states that the decedent did not know about and did not authorize Ms. Lauderdale to make such transfers;
15. Petitioner states that upon the decedent's death, the funds in the Chase account reverted to Ms. Lauderdale by operation of law;
16. Petitioner states that after decedent's death, Ms. Lauderdale closed the Chase account without any accountings having been given to the decedent before her death or to any other person with an interest in the funds, including the Petitioner or other pay-on-death beneficiaries of the investment accounts;
17. Petitioner states that he does not know what happened to the funds that were in the Chase account when Ms. Lauderdale closed the account;
18. Petitioner states that Ms. Lauderdale's removal of the funds from the decedent's accounts, without the decedent's knowledge or consent, constituted fraud on the decedent and on the intended beneficiaries of the accounts, including the beneficiaries of the Trust;
19. Petitioner states that as a result of her wrongful conduct, Ms. Lauderdale has breached her duties as successor trustee of the Trust and holds funds removed from the investment accounts;
20. Petitioner states that Ms. Lauderdale should be removed as trustee of the Trust and should be made to account and report for the funds she took from decedent's investment accounts and for her administration of the Trust estate;
21. Petitioner further states that Ms. Lauderdale, as successor trustee of the Trust, has a fiduciary duty to administer the Trust according to the Trust Instrument and applicable law, keep trust property separate from other property not subject to the Trust and see that the Trust property is designated as property of the Trust;
22. Further, Petitioner states that the Ms. Lauderdale, as successor trustee of the Trust, has a duty to keep the beneficiaries of the Trust reasonably informed of the Trust and its administration;
23. Petitioner alleges that Ms. Lauderdale has taken possession of Trust property and titled it in her own name individually. This property includes, but is not limited to, the funds taken from decedent's investment accounts;
24. Petitioner alleges that Ms. Lauderdale intentionally chose to act to her own benefit instead of to the benefit of the beneficiaries of the Trust, all contrary to her duties and responsibilities as successor trustee;
25. Petitioner also states that Ms. Lauderdale, in her capacity as successor trustee, has intentionally sought to harm Petitioner's interest as a beneficiary of the Trust by bringing a trust contest in the unlimited civil department of Fresno Superior Court (Case No. 11CECG02841), by failing to fully disclose in her pleadings the amendments to the Trust, which grant property to the Petitioner, by failing to disclose the existence of certificates of independent review related to the amendments to the Trust which grant property to the Petitioner, by failing to object to the amendments during the decedent's lifetime despite having been present at the time of their creation, and by seeking a temporary restraining order and preliminary injunction against Petitioner enjoining him from accessing the trailer without filing an unlawful detainer action and without disclosing Petitioner's entitlement to that property under the amendments to the Trust;

26. Petitioner alleges that by her actions, Ms. Lauderdale has intentionally and willfully breached her fiduciary duties to the beneficiaries of the Trust, including Petitioner, thereby causing damage to the Petitioner and the other Trust beneficiaries;

Petitioner requests an Order:

1. Immediately removing Ms. Lauderdale as trustee of the Trust;
2. Appointing a neutral third-party as successor trustee;
3. Directing Ms. Lauderdale to prepare and file an account and report of her administration of the Trust for the period of May 1, 2011 up to and including her removal as successor trustee of the Trust, and set the account and report for hearing upon proper notice;
4. Directing Ms. Lauderdale to turn over to the successor trustee all assets in her possession or control removed from decedent's investment accounts, as well as any other assets properly belonging to the Trust;
5. Surcharging Ms. Lauderdale according to proof;
6. For damages according to proof;
7. For punitive damages in an amount warranted by Ms. Lauderdale's intentional and willful breach of her fiduciary duties;
8. For any other relief the Court deems just and proper.

Evelyn Lauderdale's Opposition to Petition to Remove Trustee and for Appointment of a Successor Trustee; For Surcharge of Trustee; For Order Directing Trustee to Return Trust Property to Trust; and for order Compelling Trustee to Account and Report filed 01/09/12 states:

Respondent, Evelyn Lauderdale specifically admits and denies the various allegations in the Petition.

Respondent states that she is in the process of preparing the statutory accounting for the Trust and states that the accounting should be finalized by late January or early February 2012. Respondent states that several of the allegations in the Petition are best responded to through the accounting and requests that the court defer ruling on this Petition until the accounting has been finalized and submitted to the parties and the Court.

Respondent states that this Petition is a response to litigation filed against the Petitioner based on his actions regarding the decedent and her assets prior to her death. Respondent alleges in that litigation that Petitioner, in a predatory manner, embarked on a scheme to lull decedent into a sense of security by promising to care for all of her needs, when Petitioner secretly intended to loot decedent, her estate and rightful beneficiaries of the assets of the estate by wrongfully coercing decedent to execute amendments to the Trust.

Respondent states that she is pursuing this litigation on behalf of the Trust to restore assets to the Trust to which omitted beneficiaries contend they are entitled. Respondent states that it is questionable whether a newly appointed "neutral" third party successor trustee would pursue such complex litigation.

Respondent further states that she has not transferred any assets of the Trust, other than as instructed by either the Fresno Police Department, her attorneys, or the decedent prior to her death and on that basis denies the suggestion of impropriety.

Respondent requests a judgment as follows:

1. Denying the Petitioners request to remove Respondent as Trustee;
2. Denying the Petitioner's request directing Respondent to prepare and file an account and report for the period beginning May 1, 2011;
3. Denying Petitioner's request that the Respondent turn over all possessions in her control to a successor Trustee;
4. Denying Petitioner's request that Respondent be surcharged;
5. Denying Petitioner's request for damages;
6. Denying Petitioner's request for punitive damages; and
7. Any other relief the Court deems proper.

8B Re: Jeri L. Shubin 2007 Trust (Trust) **Case No. 11CEPR01018**

Atty Keeler, William J. (for Roberto Garcia – Beneficiary)

Atty Phillips, John W. (for Evelyn Lauderdale – Trustee/Petitioner)

Petition to Determine Validity of Purported First and Third Amendments to Trust and to Impose Constructive Trust (Prob. C. 17200, et seq., 21350, et seq; and 21360 et seq)

DOD: 06/29/11

Cont. from 022312, 022812

	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	x
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

EVELYN LAUDERDALE, Trustee of the Jeri L. Shubin 2007 Trust, is Petitioner.

Petitioner alleges:

1. Jeri L. Shubin (the "Decedent"), died June 29, 2011, a resident of Fresno County, and left property in Fresno County.
2. On August 23, 2007, Decedent executed a Declaration of Trust known as the Jeri L. Shubin 2007 Trust that called for distribution of its assets as follows:
   a. Personal property to be distributed pursuant to a letter of instruction to the trustee, or in the absence of such a letter, in equal shares to James Shubin and Gary Shubin;
   b. Real property located at 4104 E. Washington, Fresno to Rick Davis;
   c. Any residue, 1/3 to Gary Shubin, 1/3 to James Shubin, and 1/3 to various charities.
3. On July 1, 2009, the Decedent executed a document purported to be the first amendment to the trust. This amendment passes personal property to Marlene Gunion in the absence of a letter to the Trustee; real property at 4104 E. Washington, Fresno to Rick Davis; 31.9 acres of real property to William Buchnoff; real property at 1582 N. Humboldt, a 1991 trailer, a 1997 Ford Explorer, and Bank of America bank account ending in 04563 to Roberto Garcia; and the residue of the estate to be divided 1/3 to Gary Shubin (with certain restrictions), 1/3 to James Shubin (with certain restrictions), and $250,000.00 of the remaining 1/3 to charities named in the original trust, with the balance to Roberto Garcia.
4. On December 15, 2009 the Decedent executed a Second Amendment to her Trust adding a specific distribution of real property located at 2045 W. San Ramon, Fresno to Marlene Gunion.

Cont'd on Page 2

NEEDS/PROBLEMS/COMMENTS:

<u>CONTINUED FROM 02/28/12</u>
As of 03/06/12, no new documents have been filed.

1. **Need Order.**

<u>Notes:</u>
Consent to Serve as Neutral Third Party Successor Trustee by Bruce Bickel was filed 02/01/12.

Reviewed by: JF

Reviewed on: 03/06/12

Updates:

Recommendation:

File 8B - Shubin

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

5. On December 13, 2010, Decedent executed a document purported to be a Third Amendment to her Trust. This Third Amendment revokes the second Amendment and affirms the First, except that it passes the personal property to Petitioner (Evelyn Lauderdale) in the absence of a letter of instruction; passes the 1991 trailer and real property located at 2045 W. San Ramon, Fresno to Roberto Garcia; and passes the residue of the Trust 1/3 to Gary Shubin (with certain restrictions), 1/3 to James Shubin (with certain restrictions), and the remaining 1/3 to the charities originally designated in the Trust.
6. On May 17, 2011, Decedent executed a Fourth Amendment to the Trust which appointed Petitioner to act as Co-Trustee with the Decedent.

Petitioner request that the Court rescind and nullify the purported First and Third Amendments to the Trust on the following grounds:

A. First Ground: Lack of Capacity
   1. At the time of the alleged execution of the purported Trust Amendments, the Decedent was not of sound and disposing mind. The Decedent did not have the sufficient mental capacity to understand the nature of her actions in executing the purported Trusts, understand and recollect the nature and situation of her property, or remember or understand her relationship to her family members.
B. Second Ground: Undue Influence
   1. The purported Trust Amendments were executed as a direct result of undue influence exerted on the Decedent by Roberto Garcia. This undue influence consisted of the following:
      a. Roberto Garcia was a confidant to the Decedent for approximately 3 years before and up to the time of her death;
      b. Mr. Garcia had a friendly and confidential relationship with Decedent, who trusted and had confidence in Mr. Garcia;
      c. Mr. Garcia took over the decedent's financial affairs'
      d. At the time the amendments were signed and at the time of the Decedent's death, she was aged and infirm, and suffered from memory problems. As a result of these mental infirmities, Decedent was easily influenced and controlled by Mr. Garcia;
      e. Mr. Garcia actively procured the purported Trust as part of a pattern of conduct aimed at gaining control of the Decedent's major assets;
      f. During the last few months of the Decedent's life, Mr. Garcia took active steps to isolate Decedent and prevent her from having contact with family members;
      g. The Trust Amendments confer an undue benefit on Mr. Garcia. Mr. Garcia "moved in" on the Decedent during the last few years of her life, taking over ever greater control of the Decedent's life and financial affairs. Before becoming a confidant to the Decedent, Mr. Garcia had been a stranger to the Decedent.
C. Third Ground: Duress and Menace
   1. The apparent consent of Decedent to the First and Third Amendments to the Trust was obtained by Mr. Garcia's duress and menace. Decedent made statements to persons during the course of executing the purported Amendments that she feared Mr. Garcia and feared not executing the purported Amendments. Petitioner alleges that Mr. Garcia coached and practiced with Decedent what she was supposed to tell the attorney who drafted the purported Amendments, as well as another attorney who executed Independent Certificate of Reviews relating to the Decedent's will. Decedents will passes her entire estate to her Trust. Petitioner states that the Decedent would not have consented to the First and Third Amendments absent the conduct of Mr. Garcia.

D. Fourth Ground: Prohibited Transferee.
   1. Probate Code § 21350 et seq. prohibits Mr. Garcia from succeeding to any interest under the purported First and Third Amendments to the Trust as he was a care custodian to the Decedent as defined under Section 15610.7 of the Welfare and Institutions Code, and the Decedent would have been a dependent adult under the definition set forth in Welfare and Institutions Code § 15160.23 had she been between the ages of 18 and 64. Petitioner further alleges that an independent attorney did review the Decedent's will with her, but according to the Certificates of Independent Review, did not review the purported trust amendments with her.

E. Fifth Ground: Prohibited Transferee.
   1. Mr. Garcia is prohibited by Probate Code § 21360 et seq. from succeeding to any interest under the purported first and third amendments to the trust, as he was a care custodian of the Decedent as defined under section 21362 of the Probate Code and the Decedent was a dependent adult as defined under Probate Code § 21366(a). Petitioner alleges that the purported transfers are presumed to be the product of fraud and undue influence by virtue of Probate Code § 21380, subjecting Mr. Garcia to all costs, including reasonable attorney fees, should he fail to rebut the presumption (See Probate Code § 21380(d)).
   2. Because of the Decedent's lack of capacity, Mr. Garcia's exertion of undue influence, menace and duress over the Decedent, and/or because he was a prohibited transferee, Mr. Garcia holds title to trust assets as well as income therefrom, as constructive trustee for the benefit of persons entitled to distribution of the Decedent's estate. Those assets include cash and other personal property according to proof.

Petitioner prays for an order:
1. Finding the purported First and Third Amendments to the Trust void due to the mental incapacity of the Decedent;
2. Finding the purported First and Third Amendments to the Trust void due to the undue influence of Mr. Garcia;
3. Finding the purported First and Third Amendments to the Trust void due to the duress and/or menace of Mr. Garcia over the Decedent;
4. Declaring that Mr. Garcia holds any and all assets of the Trust that he has received already in trust, for the person entitled to distribution of the estate of the Decedent;
5. For costs of suit herein, including attorney fees, to the extent allowed by law;
6. Finding that Mr. Garcia is a prohibited transferee pursuant to Probate Code § 21350 et seq. and invalidating those provisions of the purported first and third Amendments to the Trust that purport to make gifts to Mr. Garcia.

Objection to Petition to Determine Validity of Purported First and Third Amendments to the Trust and to Impose Constructive Trust filed 02/16/12 by Roberto Garcia denies all of the allegations in the Petition except:
1. That the first amendment purports to convey 31.9 acres to William Buchnoff. Mr. Garcia alleges that the first amendment actually purports to convey 39.1 acres to William Buchnof.
2. That the fourth amendment purports to appoint Petitioner to act as co-trustee with the Decedent.
3. That Mr. Garcia had a friendly relationship with the Decedent.
4. That the address for the SPCA stated in the Petition is correct. Mr. Garcia also admits that McCormick Barstow has filed a request for special notice on behalf of the SPCA.

Mr. Garcia makes the following affirmative defenses:
1. The Petition and each and every cause of action therein does not state facts sufficient to constitute a cause of action against the Respondent.

2. Petitioner lacks sufficient legal standing to maintain each and every cause of action alleged in the Petition.
3. The acts, errors and omissions of Petitioner constitute unclean hands and therefore bar any relief.
4. Petitioner is estopped from pursuing the causes of action set forth in the Petition.
5. The causes of action stated in the petition were not timely filed and are barred by the applicable statute of limitation set forth by California law, including, but not limited to: the California Code of Civil Procedure, California Civil Code, and the California Probate Code.
6. Petitioner has not brought and served in a timely manner but has delayed in bringing and serving suit until a substantial time after the alleged causes of action accrued. This delay worked to the Respondent's prejudice and thus this action and any claim purported therein is barred by the Doctrine of Laches.

Respondent prays for a judgment:

1. That Petitioner take nothing on the basis of her Petition to Determine the Validity of the Purported First and Third Amendments to the Trust and to impose constructive trust;
2. That the first and third amendments be found to be valid trust amendments;
3. That the Respondent be awarded costs of suit herein incurred; and
4. That the Respondent be awarded reasonable attorneys' fees to the extent permissible by contract or statute.

8C **Jeri L. Shubin 2007 Trust (Trust)** **Case No. 11CEPR01018**

Atty **Keeler, William J. (for Roberto Garcia – beneficiary/Petitioner)**

Atty **Phillips, John W. (for Evelyn Lauderdale – Trustee)**

Petition for Preliminary Distribution and Injunction (Prob. C. 17200; CCP 526)

DOD: 06/29/11		
Cont. from		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
✓	Notice of Hrg	
✓	Aff.Mail	w/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	x
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

ROBERTO GARCIA, Trust Beneficiary, is Petitioner.

Petitioner states:

1. Decedent created the Jeri L. Shubin 2007 Trust (the "Trust") and a pour-over Will on August 23, 2007;
2. Decedent amended the Trust four times during the course of her life, first on July 1, 2009, second on December 15, 2009, third on December 13, 2010, and a final time on May 27, 2011;
3. Decedent amended her Will once on December 13, 2010;
4. Decedent died on June 29, 2011 a resident of Fresno County;
5. Petitioner, Roberto Garcia, was a close friend of Decedent and is a beneficiary of the Trust pursuant to the First, Second, Third and Fourth Amendments. Petitioner is also nominated as the second successor executor in the first codicil to the Decedent's Will;
6. Paragraph 5 of the third amendment to the Trust amends paragraph 6 of the original document to include "The Trustee shall distribute the real property described in Item No. 1 in Exhibit A attached to the Jeri L. Shubin 2007 Trust, with a common address of 2045 W. San Ramon, Fresno, California (APN 415-520-44) to Roberto Garcia, if he survives….";
7. This specific bequest was no subsequently amended or revoked in the fourth amendment;
8. Evelyn Lauderdale ("Trustee") is the acting trustee of the Trust;
9. There are currently three lawsuits pending between Petitioner and Trustee: a Second Amended Complaint for Damages filed by Trustee that is currently before Honorable Alan J. Simpson in Department 503 of the Fresno Superior Court, a Petition to Determine the Validity of the first and third amendments to the Trust, filed in this Court by the Trustee, and a Petition to Remove Trustee filed in this Court by Petitioner;

Continued on Page 2

NEEDS/PROBLEMS/COMMENTS:

1. **Need Order.**

Reviewed by: JF

Reviewed on: 03/06/12

Updates:

Recommendation:

File 8C - Shubin

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

10. In the Second Amended Complaint for Damages, Trustee alleges causes of action for Fraud, Elder Abuse, Conversion, Accounting, Recovery of Funds pursuant to Probate Code § 850, and Undue Influence. In the prayer for relief however, Trustee seeks only the following:
    a. An order invalidating transfers of trust assets of the Plaintiff previously designated for transfer to Defendant Garcia and an order restoring title to the same in the trust;
    b. A declaration of the rights, duties, and obligations of the parties herein;
    c. An order that Defendant be required to account to Plaintiff for misappropriated funds and assets set forth;
    d. An order that Defendant be subject to surcharge under the Probate Code for any interest Defendant may have in trust properties or assets;
    e. For compensatory damages in amount according to proof;
    f. For exemplary and punitive damages;
    g. For interest at the legal rate on the sums alleged pursuant to § 3288 of the California Civil Code;
    h. For attorney's fees pursuant to Welfare and Institutions Code § 15657.5;
    i. For costs of suit, equitable relief, for trial by jury, and other such relief the Court deems just and proper;
    j. For treble damages pursuant to Civil Code §3345; and
    k. For judgment for twice the value of the property recovered as provided by Probate Code § 859.
11. In the Second Amended Complaint, Trustee does not seek an order finding any of the amendments, including the fourth amendment invalid;
12. In the Petition to Determine Validity of Purported First and Third Amendments to the Trust, Trustee seeks only to invalidate the First and Third Amendments to the Trust and does not seek to impair the enforceability of the Fourth Amendment;
13. Because Trustee does not seek to invalidate the Fourth Amendment, Petitioner is entitled to receive the real property at 2045 W. San Ramon, Fresno, CA (the "Property) regardless of the outcome of the ongoing litigation;
14. Petitioner is currently residing in the 1991 Travel Trailer Holra located in the rear of the property at 2045 W. San Ramon. Petitioner began living in the trailer before Decedent's death and with her permission, and Decedent intended for Petitioner to receive both the trailer and the property upon her death, according to the all of the amendments of the Trust;
15. The property at 2045 W. San Ramon is currently vacant and has been since Decedent's death;
16. Because Petitioner is entitled to receive the property pursuant to the terms of the third amendment to the Trust, because the Fourth Amendment to the Trust explicitly republishes the provisions of the Trust as amended, because the outcome of the ongoing litigation will not affect Petitioner's entitlement to the Property, and because the Property is currently vacant, Petitioner requests that this Court order Trustee to distribute the Property to him as a preliminary distribution;
17. Petitioner is entitled to occupy the Property because it was specifically bequeathed to him by the Decedent in the amendments to the Trust and Petitioner will suffer imminent and irreparable harm if he is not permitted to occupy the Property because he is currently expecting the birth of his first child and is being forced to reside in a cramped, ill-equipped trailer located on the same parcel of real property as a house he would be entitled to occupy but for the actions of the Trustee;
18. It is unlikely the Trustee will prevail in invalidating two of the four amendments to the Trust because Decedent obtained certificates of independent review in order to ensure that Petitioner would receive the Property, among other assets, upon her death;
19. The residence on the Property is currently unoccupied, additionally, according to the Trustee, the location of the trailer and Petitioner's presence therein has generated fees and other financial penalties due to zoning violations that have been charged against the Trust. The extent of these fees is such that Trustee has previously attempted to impermissibly evict Petitioner from the trailer through a temporary restraining order filed in connection with the pending lawsuit in Department 503. Consequently, failure to allow

Petitioner to occupy the Property will result in waste to the Trust because the Property will be unoccupied, more expensive (if not impossible) to insure, and will cause additional fees to be charged against the Trust as a result of Petitioner's residence in the trailer;

20. The Trustee and the Trust will suffer no harm in the event that Petitioner is entitled to occupy the Property. In fact, the Trustee and the trust estate stand to benefit substantially if Petitioner is entitled to occupy the Property because Trustee will be able to insure the Property at a reduced rate and will be able to rectify the zoning issues associated with the Trailer.

Petitioner requests an Order:

1. Instructing Trustee to transfer Property to Petitioner pursuant to the Jeri L. Shubin 2007 Trust, as amended;
2. Prohibiting Trustee from taking any action that would prevent Petitioner from occupying the residence located on the Property;
3. Awarding Petitioner attorney's fees and costs as allowed by law; and
4. Granting such other and further relief as the Court may deem just and proper.

9 **Harry Sager (CONS/PE)** **Case No. 12CEPR00015**

Atty **Boyett, Deborah K. (Private Counsel for Conservatee Harry Sager – Petitioner)**

Petition for Order Fixing and Allowing Court- Appointed Attorney's Fees

			DEBORAH K. BOYETT, Petitioner, was Court-appointed to represent the Conservatee on 1-9-12. At hearing on 1-17-12, Petitioner was ordered relieved as Court-appointed counsel due to the fact dementia powers were not requested in the petition by the Public Guardian and the fact the Court was informed that Conservatee had retained private counsel. The Fresno County Public Guardian was appointed Conservator of the Person and Estate on 2-21-12. Petitioner asks that she be paid from the conservatorship estate for 6.4 hours at $80.00/hr for a total of $512.00. Services are itemized by date and include review of documents, communications with client and other counsel, attendance at hearing, and drafting this petition for fees.	**NEEDS/PROBLEMS/COMMENTS:**
	Aff.Sub.Wit.			
✔	**Verified**			
	Inventory			
	PTC			
	Not.Cred.			
✔	**Notice of Hrg**			
✔	**Aff.Mail**	W		
	Aff.Pub.			
	Sp.Ntc.			
	Pers.Serv.			
	Conf. Screen			
	Letters			
	Duties/Supp			
	Objections			
	Video Receipt			
	CI Report			
	9202			
✔	**Order**			
	Aff. Posting			**Reviewed by:** skc
	Status Rpt			**Reviewed on:** 3-6-12
	UCCJEA			**Updates:**
	Citation			**Recommendation:**
	FTB Notice			**File 9 - Sager**

10 **Rick Bishoff (Estate)** **Case No. 12CEPR00096**

Atty **Sanoian, Joanne (for Petitioner Kimberly Bishoff)**

Petition for Letters of Administration (Prob. C. 8002, 10450)

DOD: 11/23/11			**KIMBERLY BISHOFF**, daughter, is petitioner and requests appointment as Administrator without bond.
Cont. from			
	Aff.Sub.Wit.		All heirs waive bond.
✓	Verified		
	Inventory		Full IAEA – o.k.
	PTC		
	Not.Cred.		Decedent died intestate
	Notice of Hrg		Residence: Clovis
✓	Aff.Mail	W/	Publication: Fresno Business Journal
✓	Aff.Pub.		
	Sp.Ntc.		**Estimated value of the estate:**
	Pers.Serv.		Personal property - $140,000.00
	Conf. Screen		Income - $ 20,000.00
✓	Letters		Real property - - $ 80,000.00
✓	Duties/Supp		**Total - $ 80,000.00**
	Objections		
	Video Receipt		
	CI Report		
	9202		
✓	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		

NEEDS/PROBLEMS/COMMENTS:
Reviewed by: KT
Reviewed on: 3/2/12
Updates:
Recommendation:
File 10 - Bishoff

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

11 Edward J. Sosaya (Spousal) Case No. 12CEPR00103

Atty **Sullivan, J. Patrick (for Petitioner Elizabeth Sosaya)**

Spousal or Domestic Partner Property Petition (Prob. C. 13650)

DOD: 12/28/11		
Cont. from		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
✓	Notice of Hrg	
✓	Aff.Mail	W/O
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

ELIZABETH SOSAYA, surviving spouse, is petitioner.

No other proceedings

Will dated 12/25/11 devises entire estate to spouse.

Petitioner states she was married to the Decedent for approximately 25 years. At no time during the marriage did the Decedent inherit nor was he gifted any property. The two parcels of real property which is the subject matter of this Petition were purchased by the parties during the marriage using community property funds.

Petitioner requests court confirmation that Decedent's interest in two parcels of real property passes to her.

NEEDS/PROBLEMS/COMMENTS:

Reviewed by: KT

Reviewed on: 3/2/12

Updates:

Recommendation: SUBMITTED

File 11 - Sosaya

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

12 Johnny Garcia (Estate) Case No. 07CEPR00783

Atty **LeVan, Nancy J. (for Lorena Garcia – Daughter – Administrator)**
Atty **Emerzian, David L (for Omega Ochoa Garcia – Surviving Spouse)**

Further Status Hearing

DOD: 2-7-07		
Cont. from 120611		
	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	

LORENA GARCIA, Daughter is Administrator with limited IAEA without bond.

Letters issued 7-21-08.

On 7-14-09, the Court approved a settlement agreement between Administrator (daughter) and Omega Ochoa Garcia (surviving spouse) and allowed continuation of estate administration pending certain issues:

1) Retrial of the damages portion of Civil Case # 04CECG03607 Garcia v. Roberts; and

2) Receipt of proceeds due from an eminent domain matter

On 10-4-11 (the 7th status hearing regarding retrial of the damages issue), Attorney Emerzian advised the Court that a motion for a new trial was denied and an appeal has been filed, and that deposits need to be made. The Court set this hearing for further status.

Status Report filed 12-1-11 by Attorney LeVan states that Attorney Ty Kharazi filed a Notice of Appeal on behalf of his clients, the Roberts'. The Fifth District Court of Appeal has set a mediation for the parties on 12-12-11. Attorney LeVan requests to set a status hearing in March 2012 to follow the progress of the appeal.

Minute Order 12-6-12: No appearances. Matter continued to 3-13-12.

As of 3-2-12, nothing further has been filed.

NEEDS/PROBLEMS/COMMENTS:

Note: Examiner Notes from the 10-4-11 status hearing with a brief chronology of this case are in the file for reference.

1. Need account or current status report.

Examiner notes that Letters issued *over 3 years ago* and the Court approved continuation of estate administration *over 2 years ago*.

At recent hearings, status was provided regarding the civil matter; however, account current or status of this estate is needed if the estate is not in a position to be closed (Probate Code §12200).

At hearing on 7-26-11, the Court was advised that the estate was awarded $184,798.00, but a new trial may affect that award. The I&A value of the estate as of the date of death was $5,125.00; however, it is unknown if other amounts have been recovered or received, etc.

For example, at this point, what is the property on hand, and how is it held, etc.?

Reviewed by: skc	
Reviewed on: 3-2-12	
Updates:	
Recommendation:	
File 12 - Garcia	

13A Donna Carter (CONS/E) Case No. 11CEPR01087

Atty Romaine, William A. (of Hanford, for Petitioner Edward R. Bodley)
Atty Teixeira, J. Stanley (Court appointed for Conservatee)
Atty Kruthers, Heather (for the Public Guardian – Conservator)

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

Age: 80 years
DOB: 1/5/1931

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	X
	Duties/Supp	
	Objections	
	Video Receipt	
√	CI Report	
	9202	
	Order	X
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	X
	FTB Notice	

TEMPORARY WILL EXPIRE UPON ISSUANCE OF LETTERS TO A GENERAL CONSERVATOR

DONNA CARTER, by and through her attorney-in-fact, **EDWARD R. BODLEY,** is petitioner and requests **EDWARD R. BODLEY,** cousin**,** be appointed as conservator of the Estate**. (Note: Per C.I. Report, it appears Mr. Bodley has nominated the Public Guardian as Conservator. The Public Guardian is the current temporary Conservator per Court's order of 1/26/12. Prior to that date, the temporary conservator was Mr. Bodley, who was appointed a temporary conservator, *ex parte*, on 12/20/12.)**

Estimated value of the Estate:
Personal property - $40.000.00
Annual income - $33,600.00

NEED CAPACITY DECLARATION

Petitioner states he recently became alarmed after the return of a former caretaker into the proposed Conservatee's good graces, the proposed Conservatee is again losing funds from her bank accounts. Given her now favorable disposition to the former caretaker, the proposed Conservatee may well be unduly influenced to retract petitioner's power of attorney and appoint the former caretaker in his stead. If this should happen, the estate may well be dissipated before a hearing can take place.

PROBATE REFEREE: RICK SMITH

NEEDS/PROBLEMS/COMMENTS:

Continued from 2/28/12. Minute Order states:* The Court notes for the record that Mr. Romaine is not present due to family issues. The Court vacates today's trial date. *The Court sets a Status Hearing for 3/13/12.* The temporary letters are extended until the General Hearing or until the hearing on the termination.

Note: Attorney Stanley Teixeria was appointed as counsel for Conservatee on 12/14/11.

VOTING RIGHTS NOT AFFECTED

Court Investigator Advised Rights on 1/17/12

1. **Need *Notice of Hearing*.**
2. ***Petition* names the Petitioner as Donna Carter, by and through Edward R. Bodley, her Attorney-In-Fact. The court may require a copy of the document appointing Edward R. Bodley as Attorney-In-Fact.**
3. **Petition requests that bond be fixed at $75,000.00. *If bond is required, however, it should be set at $80,960.00, which includes the cost of recovery.***
4. **Need *Capacity Declaration*.**
5. **Need *Duties of Conservator*.**
6. **Need *Conservatorship Video Viewing Certificate.***
7. **Need *Citation* to proposed Conservatee. PrC §1823.**
8. **Need proof of personal service, 15 court days prior to the hearing, of the *Notice of Hearing* along with a copy of the *Petition on:***
   a. **Donna Carter (proposed Conservatee)**
9. **Need proof of 15 court days service by mail prior to the hearing of the *Notice of Hearing* along with a copy of the *Petition* or declaration of due diligence on:**
   a. **Sharon Brazil (daughter)**
   b. **Dennis Brazil (son)**
   c. **Kyle Weisenberger (brother)**
10. **Need Orders and Letters.**

Reviewed by: NRN
Reviewed on: 3/6/12
Updates:
Recommendation:
File 13A - Carter

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

COURT INVESTIGATOR JO ANN MORRIS' REPORT, filed 1/19/12, states: It appears that proposed Conservatee has been having serious short-term memory issues as was evidenced during the (C.I.'s) interview. She did not remember their first meeting nor did she recall filing a civil action against her friend Kathy Young and did not remember having Kathy Young's name on her accounts as recently as August of last year. There were numerous withdrawals from proposed Conservatee's accounts during the time Kathy Young's name was on the accounts, that were unlikely to have been made by proposed Conservatee. For instance, $2,400 was spent at FoodMaxx between 5/11 and 8/11. Additionally, Kathy Young's mother admitted that proposed Conservatee helped her daughter (Kathy Young) with funds to buy a truck. The Petitioner, Edward Bodley, has expressed that he no longer wishes to be appointed as conservator, due to proposed Conservatee's hostility towards him. He would like to nominate the Public Guardian to be her Conservator. Since it does appear that Ms. Carter is subject to undue influence and fraud, **it is recommended that the Public Guardian be appointed as conservator of the estate.**

13B Donna Carter (CONS/E) Case No. 11CEPR01087

Atty Romaine, William A. (of Hanford, for Petitioner Edward R. Bodley)
Atty Teixeira, J. Stanley (Court appointed for Conservatee)
Atty Kruthers, Heather (for the Public Guardian – Conservator)

Status Hearing Re: Petition for Appointment of Probate Conservator of the Estate (Prob. C. 1820, 1821, 2680-2682)

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

The Petition for Appointment of Conservator was originally scheduled for hearing on 1/26/12, and was continued to 2/28/12 for a Court Trial on the Petition. At the 2/28/12 hearing, the Court vacated the trial date and set a status hearing on the Petition for 3/13/12. *Page 13A concerns the actual Petition for Conservatorship, which also appears to have been continued from the last hearing date.*

The Public Guardian is the current temporary Conservator.

Background:

- Donna Carter "by and through Edward R. Bodley, her attorney-in-fact" filed a temporary and general petitions for conservatorship on 12/9/12;
- This Court granted Petitioner's temporary petition *ex parte* on 12/12/11;
- Attorney Stanley Teixeira was appointed to represent Conservatee on 12/14/11;
- At the initial 12/20/12 hearing on the temporary petition, the petition was denied because there were no appearances, though the general hearing remained set for 1/26/12;
- At the 1/26/12 general hearing, the Court granted on its own motion a temporary conservatorship of the estate and appointed the Public Guardian as conservator. Additionally, the court ordered Edward Bodley to place Conservatee's funds into a separate account and to prepare an accounting for any funds transferred up until that date (1/26/12), and to also provide Mr. Teixeira with a copy of the accounting. At that hearing, Attorney Teixeira requested that the general petition be set for trial with a two hour estimate (trial set for 2/18/12);
- At the 2/28/12 hearing, Attorney for Edward Bodley, William Romaine was not present due to family issues. The court vacated the trial date, and set a status hearing for 3/13/12. The court further extended the Public Guardian's temporary letters "until the General Hearing or until the hearing on the termination."
- ***Nothing has been filed since the last hearing.***

It appears from the file that Mr. Bodley has not filed the court-ordered accounting for the funds he transferred when he was the temporary conservator from 12/12/11 to 1/26/12.

NEEDS/PROBLEMS/COMMENTS:

1. **Need former temporary conservator Edward Bodley's court-ordered accounting.**

Reviewed by: NRN	
Reviewed on: 3/6/12	
Updates:	
Recommendation:	
File 13 - Carter	

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

14 Maddison Elizabeth Merrill (GUARD/E) Case No. 08CEPR00273

Atty **Merrill, Aja M. (pro per Petitioner/mother/Guardian)**

2nd Account of Maddison Elizabeth Merrill

Age: 5 years old **DOB: 6/21/2006**			**AJA MERRILL**, guardian, is petitioner. Account period: 9/1/09 – 10/31/11 Balance of the minor's blocked account as Chase Bank as of 10/18/11 was $19,711.13
Cont. from 011712			
	Aff.Sub.Wit.		
✓	**Verified**		
	Inventory		
	PTC		
	Not.Cred.		
	Notice of Hrg	X	
	Aff.Mail	X	
	Aff.Pub.		
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
	Letters		
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
	9202		
	Order	X	
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		

NEEDS/PROBLEMS/COMMENTS:

Continued from 1/17/12. Minute order states there are no appearances. The court continues the matter to 3/13/12 and orders Aja Merrill to be present on 3/13/12. The Court further orders a copy of the examiner notes be sent to the petitioner. *Proof of service indicates the minute order was mailed to Aja Merrill on 1/20/12. As of 3/2/12 the following issues remain:*

1. **This 2nd Account was filed using a fee waiver. Accountings are considered to be costs of administration. There are assets in the guardianship estate to pay the filing fee.**
2. **Accounting does not comply with Probate Code §1060.**
3. **Accounting is not on the mandatory Judicial Council forms. Probate Code § 2620.**
4. **Petition was not signed by the Co-Guardian/father Samuel Merrill.**
5. **Need *Notice of Hearing*.**
6. **Need proof of service of the *Notice of Hearing* on Maddison Merrill (minor) pursuant to Probate Code §1460.**
7. **Need Order.**

Reviewed by: KT
Reviewed on: 3/2/12
Updates:
Recommendation:
File 14 - Merrill

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

15 Angel Miramontes and Yareli Miramonte (GUARD/P) Case No. 12CEPR00048

Atty Corona, Maria (for Petitioner/maternal grandmother Maria Corona)

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

Angel age: 8 years DOB: 12/8/2003		
Yareli age 7 months DOB: 6/2/2011		
Cont. from		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	X
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	X
✓	Conf. Screen	
✓	Letters	
✓	Duties/Supp	
	Objections	
	Video Receipt	
✓	CI Report	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
✓	UCCJEA	
	Citation	
	FTB Notice	

Temporary Expires 3/13/2012

MARIA CORONA, maternal grandmother, is petitioner.

Angel's father: **ANGEL MIRANDA** –

Yareli's father: **LUIS FABIAN GUTIERREZ**

Mother: **YAIRA MIRAMONTES –** *consents and waives notice.*

Angel's paternal grandfather: Fernando Miranda
Angel's paternal grandmother: Liliana Miranda
Yareli's paternal grandfather: Luis Gutierrez
Yareli's paternal grandmother: Mrs. Gutierrez
Maternal grandfather: Hector Miramontes

Petitioner states on 1/8/2012 the mother was arrested for hitting her oldest child Angel. CPS place a safety plan where Petitioner was to continue caring for the children and was to keep the mother away from the home where the children were residing. Petitioner is fearful that once released the mother will come and pick up the children. Petitioner is also concerned that the fathers will come and pick up the children. Angel's father has a history of spousal abuse and Yareli's father is an alcoholic and abuses drugs.

Court Investigator Dina Calvillo's Report filed on 2/24/12.

NEEDS/PROBLEMS/COMMENTS:

1. **Need *Notice of Hearing*.**
2. **Need proof of personal service of the *Notice of Hearing* along with a copy of the petition or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on:**
   a. **Angel Miranda (Angel's father)**
   b. **Luis Fabian Gutierrez (Aareli's father)**
3. **Need proof of service of the *Notice of Hearing* along with a copy of the petition or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on:**
   a. **Fernando Miranda (Angel's paternal grandfather)**
   b. **Liliana Miranda (Angel's paternal grandmother)**
   c. **Luis Gutierrez (Yareli's paternal grandfather)**
   d. **Mrs. Gutierrez (Yareli's paternal grandmother)**
   e. **Hector Miramontes (maternal grandfather)**

Reviewed by: KT
Reviewed on: 3/2/12
Updates:
Recommendation:
File 15 - Miramontes

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

16 Valerie Irene Medina (GUARD/P) Case No. 12CEPR00049

Atty Martinez, Yrene (pro per Petitioner/maternal grandmother)

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

Age: 3 years DOB: 9/8/2008		
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	

THERE IS NO TEMPORARY.
No temporary was requested.

YRENE MARTINEZ, maternal grandmother, is petitioner.

Father: **JOSE JESUS MEDINA**

Mother: **ROSARIO IRENE MEDINA** – *consents and waives notice. (Now deceased.)*

Paternal grandfather: Jose Jesus Medina – *served on 1/31/12.*
Paternal grandmother: Selena Creeapaum – *served on 1/31/12.*
Maternal grandfather: Jesus Reyes – *Declaration of Due Diligence.*

Petitioner states mother has cancer and has days to live. Father is incarcerated in Mississippi. Petitioner has been a part of the minor's life since birth.

Court Investigator Samantha Henson's Report filed on 3/6/12.

NEEDS/PROBLEMS/COMMENTS:

1. **Need proof of personal service of the *Notice of Hearing* along with a copy of the Petition or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on:**
   a. **Jose Jesus Medina (father)**

Reviewed by: KT
Reviewed on: 3/2/12
Updates: 3/8/12
Recommendation:
File 16 - Medina

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

17 Ayden Stephen Solozano (GUARD/P) Case No. 12CEPR00198

Atty Solorzano, Elvia (pro per Petitioner/paternal grandmother)

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

Age: 1 ½ years DOB: 5/3/2010		
Cont. from		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	X
✓	Conf. Screen	
✓	Letters	
✓	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
✓	UCCJEA	
	Citation	
	FTB Notice	

GENERAL HEARING 4/30/2012

ELVIA SOLORZANO, paternal grandmother, is petitioner.

Father: **STEPHEN SOLORZANO**

Mother: **DESTINY GONZALES**

Paternal grandfather: Severiano Soloranzo
Maternal grandfather: Ernest Gonzales
Maternal grandmother: Gloria Gonzales

Petitioner states the minor resided with his father (who resides with Petitioner) on alternating weekends. On the weekend of February 5, 2012, the child was left in Petitioner's care by his mother who has not returned for the child. The father is presently incarcerated for an outstanding warrant and is unable to physically care for the minor. Petitioner states she has had no contact from the mother since February 5, 2012. Petitioner states a temporary is necessary because there are no other adults able to care for the minor.

NEEDS/PROBLEMS/COMMENTS:

1. **Need *Notice of Hearing*.**
2. **Need proof of personal service of the *Notice of Hearing* along with a copy of the *Temporary Petition* or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on:**
   a. **Stephen Solorzano (father)**
   b. **Destiny Gonzales (mother)**

Reviewed by: KT
Reviewed on: 3/5/12
Updates:
Recommendation:
File 17 - Solozano

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

18 Christopher Travis Mittie (GUARD/P) **Case No. 12CEPR00204**

Atty Cruz, Javier (pro per Petitioner/mom's long term boyfriend)

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

Age: 17 years		
DOB: 11/6/1994		
Cont. from		
	Aff.Sub.Wit.	
✓	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	X
✓	**Conf. Screen**	
✓	**Letters**	
✓	**Duties/Supp**	
	Objections	
	Video Receipt	
	CI Report	
	9202	
✓	**Order**	
	Aff. Posting	
	Status Rpt	
✓	**UCCJEA**	
	Citation	
	FTB Notice	

GENERAL HEARING 5/1/2012

JAVIER CRUZ, mom's long term boyfriend, is petitioner.

Father: **UNKNOWN**

Mother: **VIOLET LORRIANA MITTIE** – *deceased.*

Paternal grandparents: Unknown
Maternal grandfather: Unknown
Maternal grandmother: Wanda Nelms – *deceased.*
Sibling: Matthew Snarr – *consents and waives notice.*
Minor: Christopher Mittie – *consents and waives notice.*

Petitioner states the minor's mother recently passed away, his father is an unknown person not listed on the birth certificate. The child needs a temporary guardian as he has no parents, is still in school and requires someone to take care of him.

NEEDS/PROBLEMS/COMMENTS:

1. **Need *Notice of Hearing*.**
2. **Need proof of personal service of the *Notice of Hearing* along with a copy of the *Temporary Petition* or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on:**
   a. **Unknown father** – *unless the court dispenses with notice.*

Reviewed by: KT
Reviewed on: 3/5/12
Updates:
Recommendation:
File 18 - Mittie

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012

19 Brandon David Solis and Audrina Marie Solis (GUARD/P)

Case No. 12CEPR00055

Atty Cruz, Javier (pro per Temporary Guardian of Audrina Solis)
Atty Parks, Jeffrey N (pro per Petitioner/maternal step-grandfather)
Atty Parks, MaryAnn (pro per Petitioner/maternal grandmother)

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

Brandon age: 4 years DOB: 8/31/2007		
Audrina age: 3 years DOB: 1/20/2009		
Cont. from		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	X
	Aff.Mail	
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	X
✓	Conf. Screen	
✓	Letters	
✓	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
✓	UCCJEA	
	Citation	
	FTB Notice	

GENERAL HEARING 4/26/2012

MARY ANN PARKS, maternal grandmother, and **JEFFREY PARKS**, maternal step-grandfather, are petitioners.

JAVIER CRUZ is currently the temporary guardian of Audrina Solis. Letters expire 3/19/12.

Brandon's father: **FERNANDO MORA**
Audrina's father: **GERALDO GUIBA**

Mother: **ERICA RENEE SOLIS**

Brandon's paternal grandfather: unknown
Audrina's paternal grandfather: unknown
Maternal grandfather: Javier Solis

Petitioners state in April 2011, Audrina started staying with Javier Cruz and Violet Mittie, with an agreement between the mother and them. Violet died on 2/14/12. Since then Audria has been living with two adult men, one being Javier the other being Matt, the son of Violet, who has a felony record. There is also a younger son of Violet's Chris, he is 17. This leaves Audrina with no motherly care at the age of 3.

NEEDS/PROBLEMS/COMMENTS:

1. **Petitioners' fee waiver was denied. A filing fee of $245.00 is due.**
2. **Need *Notice of Hearing.***
3. **Need proof of personal service of the *Notice of Hearing* along with a copy of the *temporary petition* or *Consent and Waiver of Notice* or *Declaration of Due Diligence* on:**
   a. **Javier Cruz (temporary guardian)**
   b. **Fernando Mora (Brandon's father)**
   c. **Geraldo Guiba (Audrina's father)**
   d. **Erica Solis (mother)**

Reviewed by: KT
Reviewed on: 3/5/12
Updates:
Recommendation:
File 19 - Solis

20 Angel Anthony Chapa (GUARD/P) Case No. 08CEPR00438

Atty **Weinberg, Michael S. (for Michelle Willard – Paternal grandmother/Guardian/Petitioner and Terry Willard – paternal step-grandfather/Petitioner)**

Petition for Appointment of Temporary Co-Guardian of the Person (Prob. C. 2250)

Age: 5
DOB: 08/07/06

Cont. from

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

GENERAL HEARING 05/01/12

MICHELLE WILLARD, paternal grandmother, and **TERRY WILLARD,** paternal step-grandfather, are Petitioners.

MICHELLE WILLARD, paternal grandmother, was appointed Guardian of the Person and Letters were issued on 09/08/08.

Father: **ANTHONY CHAPA**

Mother: **MARIBEL REBOLLEDO**

Paternal grandfather: NOT LISTED

Maternal grandparents: NOT LISTED

Petitioners state that Michelle Willard was appointed guardian of Angel on 09/08/08. It is now necessary for the continued care and upbringing of Angel that her husband, Terry Willard, be appointed as temporary co-guardian pending his permanent appointment as co-guardian.

Declaration of Attorney Michael Weinberg filed 03/06/12 states that the current whereabouts of both of the parents is unknown; but both parents previously consented to the appointment of the Guardian, Michelle Willard when they knew the child would be living with the Guardian and Co-Petitioner, Terry Willard; therefore, it is reasonable to assume that would not now object to the appointment of Mr. Willard as co-guardian.

NEEDS/PROBLEMS/COMMENTS:

1. **Need *Notice of Hearing.***
2. **Need proof of personal service of *Notice of Hearing* with a copy of the *Petition for Temporary Guardianship* or Consent and Waiver of Notice or Declaration of Due Diligence for:**
   - Anthony Chapa (father)
   - Maribel Rebolledo (mother)
3. **Need Letters of Temporary Guardianship.**

Reviewed by: JF

Reviewed on: 03/06/12

Updates:

Recommendation:

File 20 - Chapa

Dept. 303, 9:00 a.m. Tuesday, March 13, 2012