



ATTENTION

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

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

Thank you for your patience.

Petitioner

Padilla, Henry Michael, Jr. (Pro Per – Son – Petitioner)

Petition for Letters of Administration; Authorization to Administer Under IAEA

(Prob. C. 8002, 10450)

DOD: 12/7/14		<p>HENRY MICHAEL PADILLA, JR., Son, is Petitioner and requests appointment as Administrator with Full IAEA without bond.</p> <p>All heirs waive bond (?? - See note)</p> <p>Full IAEA – ok</p> <p>Decedent died intestate</p> <p>Residence: Fresno Publication: Business Journal</p> <p>Estimated value of estate: Personal property: \$1,000.00 Real property: \$155,000.00 Total: \$156,000.00</p> <p>Probate Referee: Rick Smith</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Continued from 5/4/15, 7/20/15, 8/31/15, 9/28/15, 1/4/16</u></p> <p><u>Note: This is the seventh (7th) hearing on this petition; however, nothing further has been filed since 9/22/15. The following issue remains noted:</u></p> <p style="text-align: center;"><u>SEE PAGE 2</u></p> <p><u>Note: If granted, the Court will set status hearings as follows:</u></p> <ul style="list-style-type: none"> Monday, July 11, 2016 for filing the Inventory and Appraisal Monday, April 10, 2017 for filing the first account or petition for final distribution. <p>If the proper items are filed prior to the status hearing dates pursuant to Local Rule 7.5, the status hearings may come off calendar.</p>	
Cont. from 050415, 072015, 083115, 092815, 010416, 022216				
<input type="checkbox"/>	Aff.Sub.Wit.			
<input checked="" type="checkbox"/>	Verified			
<input type="checkbox"/>	Inventory			
<input type="checkbox"/>	PTC			
<input type="checkbox"/>	Not.Cred.			
<input type="checkbox"/>	Notice of Hrg			x
<input type="checkbox"/>	Aff.Mail			x
<input checked="" type="checkbox"/>	Aff.Pub.			
<input type="checkbox"/>	Sp.Ntc.			
<input type="checkbox"/>	Pers.Serv.			
<input type="checkbox"/>	Conf. Screen			
<input checked="" type="checkbox"/>	Letters			
<input checked="" type="checkbox"/>	Duties/Supp			
<input type="checkbox"/>	Objections			
<input type="checkbox"/>	Video Receipt			
<input type="checkbox"/>	CI Report			
<input type="checkbox"/>	9202			
<input checked="" type="checkbox"/>	Order			
<input type="checkbox"/>	Aff. Posting			
<input type="checkbox"/>	Status Rpt			
<input type="checkbox"/>	UCCJEA			
<input type="checkbox"/>	Citation			
<input type="checkbox"/>	FTB Notice			
		<p>Reviewed by: skc</p> <p>Reviewed on: 5/3/16</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 9 - Padilla</p>		

Page 2 - NEEDS/PROBLEMS/COMMENTS:

1. Declaration of Michelle Nino filed 8/17/15 states she is one of two children of the decedent and waives NOTICE and also waives ANY INTEREST in the estate.

Ms. Nino's declaration appears to be an irrevocable disclaimer of interest as discussed in Probate Code §§ 265, 275 et seq.

Pursuant to Probate Code §282, a disclaimer, when effective, is irrevocable and binding, and the disclaimed interest shall descend to the issue of the disclaimant as if the disclaimant had predeceased the decedent.

Therefore, need clarification: Does Ms. Nino have issue that will now be heir(s) to her share of the estate? If so, need their information pursuant to #8 of the petition, and need waivers of bond from them. Note that bond cannot be waived if there are minor heirs.

On 9/22/15, Petitioner filed a Declaration noting that Probate Code §282(b)(1) contains an exception to the above-referenced situation, and states that if the beneficiary is not treated as having predeceased the decedent, there is no problem or issue as suggested and the case can go forward with his appointment as administrator and the probate case can proceed to its proper completion.

Examiner notes as follows:

§282(b)(1) states:

(b) Notwithstanding subdivision (a), where the disclaimer is filed on or after January 1, 1985:

(1) The beneficiary is not treated as having predeceased the decedent for the purpose of determining the generation at which the division of the estate is to be made under Part 6 (commencing with Section 240) or other provision of a will, trust, or other instrument.

§240 states:

240. If a statute calls for property to be distributed or taken in the manner provided in this section, the property shall be divided into as many equal shares as there are living members of the nearest generation of issue then living and deceased members of that generation who leave issue then living, each living member of the nearest generation of issue then living receiving one share and the share of each deceased member of that generation who leaves issue then living being divided in the same manner among his or her then living issue.

This exception has to do with level of division of shares, and not with who is entitled to take pursuant to disclaimers.

As explained in the annotated code commentary: This provision is designed to prevent an heir from disclaiming for the purpose of increasing the share of his or her line at the expense of the other line of descendants. For example: If the decedent had two children, one deceased with one child, and the other living with three children, the level of division remains at the child level (one-half shares). If the living child disclaims, the division remains in one-half shares, and does not revert to one-quarter shares because of the disclaimer at the expense of the child of the deceased heir. The deceased child's heir would still be entitled to his parent's one-half share, and the disclaimant's three children would then split their parent's one-half share.

Therefore, the section Petitioner cites does not apply to Petitioner's situation, and the issue above remains noted. If Ms. Nino's declaration is deemed a disclaimer by the Court, then need information regarding her issue for #8 of the petition and waivers of bond from all new heirs, or bond of \$156,000.00.

Attorney
Attorney

Scardigli, Yamin T.
Boyett, Deborah K.

Petition for Authorization to Consent to Necessary Medical Treatment

Age:		NEEDS/PROBLEMS/COMMENTS: OFF CALENDAR Matter rescheduled for 5/4/16 at 10:30 am.
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		
		Reviewed by: skc
		Reviewed on: 5/2/16
		Updates:
		Recommendation:
		File 20- Jaimes