1 Gerald William Hornig (CONS/PE) Case No. 07CEPR00842

Atty **Kruthers, Heather H., of County Counsel's Office (for Public Guardian)**

Petition for Fees for Conservator and Her Attorney

Age: 71 years		
Cont. from		
	Aff.Sub.Wit.	
✓	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
✓	**Notice of Hrg**	
✓	**Aff.Mail**	W/
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
✓	**CI Report**	
	9202	
✓	**Order**	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

PUBLIC GUARDIAN, Conservator of the Person and Estate appointed on 10/9/2007, is Petitioner.

Petitioner states:

- Petitioner's First Account was approved on 8/24/2009, including dispensation of further accountings pursuant to Probate Code § 2628(b), the requirements of which continue to be met;
- Conservatee is on Medi-Cal; the State allows the share of cost normally paid to a facility for Medi-Cal clients to be used to pay a Conservator's fees instead; it requires a Court Order stating that fees are owed and approved;
- Petitioner and her attorney have provided services on behalf of the Conservatee without payment since 5/27/2009;
- Petitioner requests fees covering a 5-year period; Petitioner expended a total **of 17.00 Deputy hours @ $96/hour and 11.00 Staff hours @ $76/hour** on behalf of the Conservatee *(Statement of Services Rendered is attached as Exhibit A; entry dates cover the period of 8/20/2009 through 3/10/2014)*, for a total sum of **$2,468.00** as reasonable compensation for the Public Guardian's services;
- Petitioner's attorney has expended **5.0 hours** of work over a 5-year period, including drafting this petition; valuing County Counsel's time @ **$150.00/hour**, the sum of **$750.00** is reasonable compensation for legal services;
- Due to the insufficiency of the estate, Petitioner seeks a lien for any unpaid commissions and fees against the estate of the Conservatee.

Petitioner prays for an order:

1. Approving the amounts requested for compensation to the Public Guardian and her attorney for services rendered in conjunction with the conservatorship; and
2. Imposing a lien against the estate for any authorized compensation to Petitioner and her attorney.

NEEDS/PROBLEMS/ COMMENTS:

Note: *Petition* was filed with a Fee Waiver granted on 6/4/2014.

Reviewed by: LEG

Reviewed on: 7/14/14

Updates:

Recommendation:

File 1 – Horning

Dept. 303, 9:00 a.m. Wednesday, July 16, 2014

2 **Janet Rae Scott (Estate)** **Case No. 11CEPR00942**

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

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

DOD: 9/29/11			
Cont. from: 061814			
	Aff.Sub.Wit.		
✓	**Verified**		
✓	**Inventory**		
✓	**PTC**		
✓	**Not.Cred.**		
✓	**Notice of Hrg**	W/	
✓	**Aff.Mail**		
	Aff.Pub.		
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
✓	**Letters**	3/15/12	
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
✓	**9202**		
✓	**Order**		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
✓	**FTB Notice**		

PUBLIC ADMINISTRATOR, Administrator, is petitioner.

Account period: 10/21/11 – 4/16/14

Accounting	-	**$306,068.14**
Beginning POH	-	**$232,000.00**
Ending POH	-	**$ 86,322.07**
Administrator (statutory)	-	**$9,121.37**
Administrator X/O (sale of real and personal property and preparation of taxes)	-	**$2,718.00**
Attorney (statutory)	-	**$9,121.37**
Bond (o.k.)	-	**$1,912.93**
Court Fees (filing fee, certified copies)	-	**$573.50**

Petitioner states in the administrator's petition for appointment of special administration there was a need for such appointment to begin the process of filing a civil lawsuit to recover property believed wrongfully taken from the decedent. County Counsel's workload does not allow him to handle all litigation that arises from probate matters. The law firm of Dowling, Aaron, Inc. (DAI) agreed to represent the administrator in the civil litigation.

Please see additional page.

NEEDS/PROBLEMS/COMMENTS:

Continued from 6/18/2014. Minute order states the court will require additional information regarding the $42,000.00.

Reviewed by: KT

Reviewed on: 6/16/14

Updates:

Recommendation:

File 2 - Scott

On 11/8/12 the court authorized payment of fees to DAI in the amount of $9,584.00. On 2/17/13, the Court authorized another $14,463.00 to DAI. The firm's last invoice from December 2013 was $42,415.30, which petitioner has not sought authority to pay. County Counsel noted for DAI that the total of the three invoices, $66,462.30, was $4,010.30 more than the amount recovered from the civil action ($62,452.00). DAI agreed to reduce its fees by $10,000.00, thus netting the estate $5,989.70 from the civil litigation. The Public Administrator seeks instructions regarding the remaining amount of fees to be paid to DAI. With reduction, they are asking for $32,415.30.

After payment of fees and costs totaling $55,862.47 the remaining property on hand of $30,459.60 will be distributed to the Public Guardian, as conservator of the estate of the decedent's sole heir, her mother, Dorothy Hart.

Declaration of Jared C. Marshall in Support of the Public Administrator's Petition for Allowance of payment of Attorney Fees and Costs to Dowling, Aaron, Inc. filed on 6/30/14 states on or about October 2011 Dowling, Aaron, Inc., ("DAI") was retained by the Public Administrator to pursue a civil lawsuit against Defendant James LeMon ("Mr. LeMon") to recover two parcels of real property believed to have been wrongfully taken from Decedent Janet Scott.

For the first month following their retention as counsel, DAI's efforts were aimed at performing a preliminary investigation of the facts and attempting to informally resolve the matter with Mr. LeMon to avoid the costs of litigation. When these efforts failed, DAI prepared a Petition to Determine Title to Real Property; for Transfer of Property to Personal Representative; for Accounting for Constructive Trust; and for Damages for Financial Abuse of a Dependent Adult was filed on 8/7/12.

The litigation that was filed lasted approximately seven months. As the conclusion of that time, with the assistance of the court at a Mandatory Settlement Conference, the parties agreed to a settlement that resulted in the recovery of the value of the property.

Ultimately, during the period of time for which DAI is now requesting payment of their fees and costs, approximately 117 paralegal hours were directed towards investigation and discovery, resulting in $17,201 in fees. 77 hours were spent negotiating and effectuating the settlement terms, which resulted in fees of $13,279.50. Additionally, before the settlement was negotiated, 4.5 hours were spent on pre-trial activities at a cost of $779.50. Billing statement from December 2012 to November 2013 is attached for the Court's review.

3 Fernando De La Mora (GUARD/PE) **Case No. 12CEPR00786**

Atty Horton, Lisa (for Petitioner/Guardian Delia Gonzalez)

(1) First Account and Report of Guardian (2) Petition for Allowance of Attorney Fees and Reimbursement of Costs Advanced

Age: 14 years			**DELIA GONZALEZ**, Guardian, is petitioner.
			Account period: 10/31/12 – 10/30/13
Cont. from			Accounting - **$117,522.76** Beginning POH - **$117,353.87** Ending POH - **$112,286.10**
	Aff.Sub.Wit.		
✓	**Verified**		Attorney - **$4,589.25** (29.60 hours @ $80 - $300 per hour for attorney and paralegal time for services in connection with the petition to appoint a successor guardian of the person and the first account.)
	Inventory		
	PTC		
	Not.Cred.		
✓	**Notice of Hrg**		
✓	**Aff.Mail**	W/	
	Aff.Pub.		Costs - **$797.00** (filing fee, certified copies)
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		**Petitioner prays for an Order:**
	Letters		1. Approving, allowing, and settling the account and report of guardian; 2. Authorizing payment of attorney fees and costs.
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
✓	**2620(c)**		
✓	**Order**		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		

NEEDS/PROBLEMS/COMMENTS:

Note: If the petition is granted, status hearings will be set as follows:

- **Wednesday, August 19, 2015** at 9:00 a.m. in Department 303, for the filing of the final account.

Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior the date set the status hearing will come off calendar and no appearance will be required.

Reviewed by: KT

Reviewed on: 7/14/14

Updates:

Recommendation:

File 3 – De La Mora

Dept. 303, 9:00 a.m. Wednesday, July 16, 2014

4 George L. Smith (Estate) Case No. 13CEPR00058

Atty **Thompson, Timorthy L.; Cunningham, Nikole E., of McCormick Barstow (for Petitioner Michelle K. Johnson, daughter)**
Atty **Law Offices of Joanne Sanoian (for Christine Reynolds, Decedent's former caregiver)**

Petition for Letters of Special Administration [with Limited Authority]

	DOD: 10/3/2012	
	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	

MICHELLE K. JOHNSON, daughter is petitioner and requests appointment as Special Administrator without bond.

Decedent died intestate.

Estimated value of the estate:

Personal property	-	$ 40,000.00
Real property	-	$150,000.00
Total:	**-**	**$190,000.00**

Petitioner states:

- This case was filed by Petitioner as the only natural child of the Decedent;
- The Petition that was filed against **CHRISTINE REYNOLDS** seeks findings of financial elder abuse, conversion, and recovery of estate property pursuant to probate Code § 850;
- The parties engaged in a Settlement Conference with the Court on 11/5/2014, during which the Court ordered **CHRISTINE REYNOLDS** to file a *Petition for Letters of Special Administration* with the sole purpose of obtaining bank statements from all financial accounts in the Decedent's name;
- The Court noted at that time that Ms. Reynolds was to obtain the records expeditiously so that the parties could immediately reschedule and complete the Settlement Conference with the Court;

~Please see additional page~

NEEDS/PROBLEMS/COMMENTS:

Note: *Letters of Special Administration* issued to **CHRISTINE REYNOLDS** on 1/7/2014, which expired on **4/7/2014**. Order for Special Administration signed on 1/7/2014 states Christine Reynolds was authorized to obtain copies of all statements from all financial accounts in the Decedent's name, "over which she, Christine Reynolds, had control and/or access to."

1. Caption of the instant *Petition* requests appointment of Special Administrator with Limited IAEA Authority; however, Item 2(c) is incomplete such that no IAEA Authority is requested. If Limited IAEA authority is in fact requested, publication is required pursuant to Probate Code §8545 providing that notice shall be the same as under Probate Code §8003, which includes publication under Probate Code § 8120 et seq.

2. Item 3(d) is incomplete regarding the reasons Petitioner requests bond not be required. Bond is required pursuant to Probate Code § 8480, unless it is waived for the special administrator under Probate Code § 8543.

~Please see additional page~

Reviewed by: LEG
Reviewed on: 7/14/14
Updates:
Recommendation:
File 4 - Smith

Petitioner states, continued:

- Despite the Court's request, Ms. Reynolds waited more than one and a half months to even file her *Petition for Letters of Special Administration [Note: Ms. Reynold's Petition was filed on 12/20/2013]*; upon filing, the Court granted Ms. Reynold's *Petition for Letters of Special Administration [on 1/7/2014]*;
- Thereafter, and more than 5 months later, Ms. Reynolds finally produced the bank records that were requested at the November 5th Settlement Conference;
- Upon review of the records produced, it is clear that Ms. Reynolds, contrary to the Court's Order, failed to subpoena several other banking institutions where Decedent maintained accounts;
- Specifically, Ms. Reynolds only obtained records from Decedent's business bank account; she failed to subpoena the records from his personal bank account;
- Indeed, Decedent's personal bank account records are highly relevant and Ms. Reynolds had access to that account both before and after Decedent's death;
- Furthermore, the produced records disclose the potential existence of other bank accounts that may have been held in the Decedent's name;
- Throughout the entire pendency of this case, Ms. Reynolds has intentionally caused delay and has prevented the case from moving forward;
- Ms. Reynolds failed to obtain countless bank records that she was requested to obtain by this Court;
- In so doing, Mr. Reynolds has prevented the Settlement Conference in this matter from being put back on calendar;
- As such, Mr. Johnson requests this Court grant her the power to obtain the requested and necessary bank records herself rather than permitting Ms. Reynolds to continue to delay this action.

Petitioner seeks limited and specific powers as Special Administrator to obtain true and correct copies of all account statements from all financial accounts held in the name of Decedent.

NEEDS/PROBLEMS/COMMENTS, continued:

3. *Petition* does not provide an estimated duration for the special administration, and proposed order and letters do not include an expiration date for the special administration. Proposed letters shall include the expiration date for the *Letters of Special Administration*, pursuant to Probate Code § 8542. Petitioner should suggest to the Court an estimated expiration date to be inserted into the *Letters of Special Administration*. Court will set a Status Hearing on the expiration date, at which time Petitioner may request the letters of special administration be extended, if necessary.

5 Henry and Margaret Boyajian (Trust) Case No. 14CEPR00145

Atty Pruett, Barry W. (of Grass Valley, for Phyllis Branche – Petitioner)
Atty Camenson, David M. (for Margaret Courtis – Objector)
Atty Burnside, Leigh W (for Jeffrey L. Boyajian – Trustee)

Petition to Appoint Successor Trustee of Bypass Trust and Grandchildren's Trust and for Instructions

Henry Boyajian DOD: 10-18-01		
Margaret Boyajian DOD: 10-29-13		
Cont: 041014		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
✓	Notice of Hrg	
✓	Aff.Mail	w
	Aff.Pub.	
	Sp.Ntc.	
✓	Pers.Serv.	w
	Conf. Screen	
	Letters	
	Duties/Supp	
✓	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	x
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

PHYLLIS BRANCHE, daughter of Henry and Margaret Boyajian (trustors) and beneficiary, is Petitioner.

Petitioner states Henry and Margaret Boyajian established the trust on 4-9-97 and amended and restated the trust on 9-23-99. After Henry's death on 10-18-01, Margaret became the sole trustee and pursuant to the trust created and funded the Survivor's Trust with the surviving trustor's share of the community property and a portion of the deceased trustor's share equal to the minimum necessary to eliminate estate taxes (the marital deduction amount) and the Bypass Trust with the remaining trust property. The Survivor's Trust was then amendable; however, the Bypass trust was irrevocable. After the death of the surviving trustor, the assets of the Survivor's Trust were to be added to the Bypass Trust and distributed as follows:

1) Real property on Nebraska Avenue in Selma to Jeffrey Boyajian;
2) $400,000 in securities or cash to Petitioner in trust for each of the three grandchildren, Andrew Boyajian Branch, Cody Branche Boyajian, and Alan Boyajian Branche, pursuant to a specified formula; and
3) The remainder to Petitioner and Margaret Courtis in equal shares.

SEE ADDITIONAL PAGES

NEEDS/PROBLEMS/COMMENTS:

1. **Petitioner states the principal place of administration is Fresno County; however, the Successor Trustee, Jeffrey Boyajian, appears to reside in San Leandro, CA, which is Alameda County. Therefore, need clarification re Fresno as proper venue with reference to Probate Code §17005.**
2. **Petitioner states the names and addresses of the beneficiaries or trustees; however, Petitioner does not state that these are all of the persons *entitled to notice* pursuant to Probate Code §§ 17201, 17203, 851. The Court may require a verified declaration that this list contains all of the persons *entitled to notice*.**
3. **Need copies of trust and amendments. Petitioner states copies of the relevant documents are attached; however, there is nothing attached to the petition.**

   ***Note**: Respondent Jeffrey Boyajian provided a copy of the Third Amendment only.*
4. **Petitioner requests appointment of herself and Margaret Courtis as co-successor trustees of the Bypass Trust. Need consent of Margaret Courtis.**
5. **Need order.**

Reviewed by: skc	
Reviewed on: 7-15-14	
Updates:	
Recommendation:	
File 5 – Boyajian	

Petitioner states on 12-21-07, the Surviving Trustor amended the Restatement as to the Survivor's Trust (the First Amendment). On 8-18-07, the Surviving Trustor again amended the Survivor's Trust (the Second Amendment), which Second Amendment revoked the First Amendment, and also:

- Confirmed the specific bequest of real property to Jeffrey Boyajian;
- Concedes that the $400,000 specific bequest by the Trustors jointly to the grandchildren is irrevocable; and
- Contrary to the dictates of the trust regarding final distribution and regarding the trustee, and despite conceding the irrevocability of the specific bequests to the grandchildren, Surviving Trustor purports to modfy the specific bequests by
  1) replacing Petitioner as trustee for the grandchildren with a committee comprised of Petitioner, Margaret Courtis, and Jeffrey Boyajian, and
  2) modifying the specified formula for distributions;
- Contrary to the dictates of the trust and despite conceding the irrevocability of the provisions of the restatement, Surviving Trustor purports to revoke the distribution of the remainder of the trust to Petitioner and Margaret Courtis by instead giving them a specific bequest of $1million each, with the remainder to Jeffrey Boyajian;
- Surviving Trustor purports to state that the provisions of the Second Amendment control over any conflicts between the language of the Restatement and the Second Amendment.

Petitioner states on 6-25-10, and contrary to the dictates of the trust regarding successor trustees of the Bypass Trust, Surviving Trustor executed a Third Amendment that purports to revoke the nomination of Petitioner and Margaret Courtis as successor co-trustees of the Bypass Trust and replace them with Jeffrey Boyajian.

The Surviving Trustor passed away on 10-29-13 and since her death, Jeffrey Boyajian has been acting as the successor trustee of the Survivor's Trust and the Bypass Trust.

Based on the many inconsistencies among the language of the Restatement and the Second and Third Amendments, Petitioner requests instructions from this Court as follows:

Petitioner states the Surviving Trustor clearly had no authority to modify the provisions of the Restatement as to the successor trustee of the Bypass Trust. As such, Petitioner requests that Jeffrey Boyajian be removed as successor trustee and that Petitioner and Margaret Courtis be appointed as successor co-trustees of the Bypass Trust.

There exists a conflict between the Restatement and the Second Amendment as to the final disposition of the trust corpus. Petitioner states the Deceased Trustor's intent was clear that Jeffrey Boyajian receive the property, the grandchildren receive $400,000 each, and Petitioner and Margaret Courtis share the remainder. It is Petitioner's position that while the Surviving Trustor had the authority to amend the Survivor's trust, she breached the Restatement and did not have the power to modify the dispositive provisions as to the Deceased Trustor's share of the community property, which became his separate property pursuant to Probate Code §100 by reason of his death. Petitioner states that because the Surviving Trustor concedes that the $400,000 specific bequest is irrevocable, such irrevocability must also apply to the dispositive provision of such specific bequests.

As such, Petitioner requests that this Court order that Jeffrey Boyajian, as successor trustee of the Survivor's Trust, to return to the Bypass Trust an amount equal to the Deceased Trustor's share of the community property as of his date of death to be distributed pursuant to the Bypass Trust.

SEE ADDITIONAL PAGES

Because the $400,000 for each of the grandchildren is to be held in trust, the Second Amendment is contrary to the Restatement in wrongfully modifying the trustee of the grandchildren's trusts. While the Surviving Trustor had the ability to modify the Survivor's Trust, she did not have the power or right to modify the dispositive provisions of the Deceased Trustor's share of the community property, including naming the trustee of the grandchildren's trusts. Petitioner again points to the concession that the $400,000 bequests are irrevocable, and as such, the irrevocability must apply to the appointment of the trustee. Therefore, Petitioner requests that she be appointed as trustee of the grandchildren's trust and to distribute pursuant to the Restatement.

Petitioner prays for an order as follows:

1. **Finding that all facts stated in the petition are true and all notices required by law have been duly given;**
2. **Removing Jeffrey L. Boyajian as successor trustee of the Bypass Trust and appointing Petitioner and Margaret Courtis as successor trustees of the Bypass Trust;**
3. **That Jeffrey L. Boyajian as successor trustee of the Survivor's Trust return to the Bypass Trust an amount equal to the Deceased Trustor's share of the community property as of his date of death to be distributed pursuant to the dictates of the Bypass Trust;**
4. **That Petitioner be appointed as trustee of the Grandchildren's trust; and**
5. **For such other orders as the Court considers proper.**

Maggie Courtis' Objection states the amendments are valid and Jeffrey Boyajian is the proper successor trustee of the Byapss Trust and the grandchildren's trusts. The amendments were made with the assistance of legal counsel (Attorney Jeff Wall). The purpose of the amendment was to create a "zero tolerance" threshold for recipients of the grandchildren's gifts to ensure that the recipients have not engaged in substance abuse for at least three years. The Third Amendment appointing Jeffrey Boyajian as successor trustee of both trusts was also made with the assistance of Jeff Wall as counsel, and Jeffrey Boyajian has been serving as such since 10-29-13.

Objector states the Bypass Trust was funded with the Selma Property and about $656,000 of securities. The specific gift of the property to Jeffrey Boyajian is not at issue. Therefore, the assets of the Bypass Trust are insufficient to gift $400,000 to each of the three other grandchildren. Plain and simple, Petitioner is attempting to obtain more money than the amendments provide. The money would come from the Survivor's Trust, which is agreed to be amendable/revocable. Margaret Boyajian only amended the Survivor's Trust. Her intent is clear and should not be frustrated. Applying Petitioner's reasoning to the interpretation of the amendments would completely dismiss Margaret Boyajian's intent with respect to the distribution, which is that the balance of the $400,000 each is subject to the condition of being drug-free, something that Petitioner (their mother) does not deem an appropriate restriction.

No-contest clause: Objector states that if a beneficiary under the Restated Trust shall contest in court the validity or seek adjudication that the Restated Trust or any of its provisions is void or set aside any provisions, then the right of that person shall be determined as if predeceased without leaving issue. Petitioner is seeking to void or set aside the provisions of the Restated Trust as set forth in its amendments; therefore, her right is to be eliminated.

Objector prays for an order that:

1. **The Restated Trust amendments are valid with respect to Trust A (Survivor's Trust) assets;**
2. **Only Trust B (Bypass Trust) assets are subject to the irrevocability language of the Restated Trust;**
3. **Trust B assets consisted only of the Selma Property and 94,406 shares of the Franklin Fund Securities at the death of Margaret Boyajian;**
4. **Jefffrey Boyajian is the proper successor trustee of all trusts created under the Restated Trust;**
5. **Petitioner has invoked the "No Contest" provisions of the Restated Trust with the filing of this petition and there is no longer a proper beneficiary of the trusts established pursuant to the Restated Trust.**

SEE ADDITIONAL PAGES

Jeffrey Boyajian's Response states Petitioner is seeking instructions regarding who is the proper trustee of the trust shares to be established for her three adult sons. Respondent understood that he had been appointed to serve with Margaret Boyajian as co-trustee and as sole successor trustee pursuant to the Third Amendment (attached). Respondent is uncertain whether the First and Second Amendments validly nominated him as successor trustee of the Bypass Trust; however, is informed and believes that the Bypass Trust was not subject to amendment. As noted; however, pursuant to the Third Amendment, he was nominated and served with Margaret Boyajian as co-trustee.

Respondent states that in the Second Amendment, Margaret Boyajian stated her understanding of the irrevocability of the Bypass Trust, but further stated her intent to modify the dispositive provisions of the Survivor's Trust as to her grandchildren Andrew, Cody, and Alan. It is unclear whether the $400,000 gift to each of them applied only in the event of the combination of the Survivor's Trust with the Bypass Trust, or if the trusts were not combined, to what extent, if any, would that affect the amount of the bequests/distributions to be made to them.

Mrs. Boyajian was concerned about her grandchildren's ability to responsibly manage their inheritance and instructed her attorney to prepare amendment directing a committee to consider distributions. In doing so, she attempted to modify the formula, which changes pertain to the Survivor's Trust. It is unclear if the $400,000 gift to each of the three grandchildren applied only in the event assets were combined, etc.

Mrs. Boyajian had the authority to amend the Survivor's Trust such that both Petitioner and Margaret Courtis could potentially receive no assets from the Survivor's Trust if they received from other sources, including, but not limited to the Bypass Trust, life insurance proceeds, or other assets) the sum of $500,000 each.

Mrs. Boyajian had the authority to amend the Survivor's Trust to name Respondent as beneficiary of said sub-trust.

Mrs. Boyajian intended the provisions of the Second Amendment to apply to the Survivor's Trust and desired to appoint Respondent with her as co-trustee, as she was in need of assistance at that time. Respondent has been administering the assets of the trust as he understood it was his responsibility to marshal and administer the assets for all beneficiaries.

Respondent states instructions would be appropriate as to the administration and disposition of the trust. Petitioner and Margaret Courtis are nominated as successor co-trustees; however, instructions are needed as to whether Mrs. Boyajian had authority to change the nomination with the Amendments.

Respondent states he does not know whether he is required under the Second Amendment to combine the assets of the Survivor's Trust with those of the Bypass Trust prior to final distribution, particularly if the funding of the Survivor's Trust was conducted in accordance with the terms of the Restated Trust and with regard to the amendments. If not combined, to what extend is the amount of the bequests to the grandchildren $400,000 each) affected?

Respondent agrees that instructions are needed regarding the application of the Second and Third amendments and their scope and effect on beneficiaries.

Respondent therefore requests that this matter be set for evidentiary hearing to consider all evidence and make any and all further orders the Court may deem just and proper.

Petitioner filed a Response to Ms. Courtis' Objection of on 4-10-14 and requests that the petition be approved as prayed. See Response for details.

6A Melinda Cordell (Durable Power Attorney) Case No. 14CEPR00159

Atty Rindlisbacher, Curtis D. (for Petitioner Melinda Cordell)
Atty Gaebe, C. Matthew (of Visalia, for Objector Phillip Rolfe – Attorney-in-Fact for Petitioner)
Atty Soares, Joseph F. (for Joseph Lewis Horswill – Respondent)

Petition to Determine Whether Advanced Health Care Directive has Terminated:
Petition to Determine Whether Durable Power of Attorney has Terminated
Probate Code §§ 4541, 4766

Cont from 031914, 052714, 061714, 062514

	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	

MELINDA CORDELL, Principal, is Petitioner.

Petitioner states she presently resides at Somerford Place of Fresno, a facility licensed to provide care for those how have been diagnosed with dementia, which she does not have. Petitioner is not married and has no children.

Petitioner previously signed a Durable Power of Attorney and an Advanced Health Care Directive (Exhibits A and B).

On 9-19-12, Petitioner resigned as trustee of her own trust because of ill health and other personal reasons. **PHILLIP ROLFE** began serving as trustee from that point. Petitioner sought the assistance of her former attorney, **JOSEPH HORSWILL**, to make changes to her estate plan. On 11-22-13, he wrote to inform her that because he felt the plan was not in her best interest, he would not perform the legal work to accomplish her stated desires. In his letter, he stated that if Petitioner wished to contact another attorney to request that the work be done, he would cooperate as required by law for that purpose (Exhibit C).

Petitioner states she initially sought assistance from an attorney in New York City that she has known for many years, but was advised to locate a California attorney. Petitioner was then referred to Perkins, Mann & Everett. Mr. Rindlisbacher visited Petitioner at the facility where she has resided for over a year, and at Petitioner's request, contacted Attorney Horswill to request that he transfer Petitioner's files to Mr. Rindlisbacher's office.

Petitioner states that at her request, Mr. Rindlisbacher asked Somerford Place of Fresno to provide him with copies of all medical assessments and copies of her admission agreement; however, they have refused to provide him with those records despite Petitioner's signed written consent. They have taken the position that they will not abide by Petitioner's request without the consent of the agent designated in Petitioner's "facially valid" power of attorney. See Exhibit F.

SEE ADDITIONAL PAGES

NEEDS/PROBLEMS/COMMENTS:

Continued from 3-19-14, 5-27-14, 6-17-14, 6-25-14

Minute Order 3-19-14: The Court directs Mr. Rindlisbacher to prepare an order for Ms. Cordell's examination by Dr. Terrell. Order to include the necessary HIPPA waivers. Status quo to remain pending the next hearing. Continued to: 6/17/14 at 09:00a.m. Set on: 6/17/14 at 09:00a.m. in Dept 303 for: Status Hearing Re: Doctor's Report (Note: Per order of 5-7-14, the continuance was reset from 6-17-14 to 5-27-14. However, on 5-27-14, the matter was again continued to and set for status on 6-17-14.)

Minute Order 5-27-14: The issue of accountings is reserved by the Court. Phillip Rolfe is ordered to provide Melinda Cordell copies of everything he receives including, but not limited to bank statements beginning 6/1/14. Continued to 6/17/14 @ 9:00 a.m. Dept. 303. Set on 6/17/14 @ 9:00 a.m. Dept. 303 for: Status Hearing

Note: On 6-3-14, Melinda Cordell filed Ex Parte Petition for Order Regarding Mental Examination. Pursuant to Order 6-4-14, the petition was set for hearing on 6-25-14. Phillip Rolfe filed a Response on 6-4-14.

Please note that because the petition was set for hearing, a filing fee of $435 is due from both Petitioner and Mr. Rolfe (for Response).

Reviewed by: skc
Reviewed on: 7-14-14
Updates:
Recommendation:
File 6A - Cordell

Dept. 303, 9:00 a.m. Wednesday, July 16, 2014

Petitioner states Mr. Rolfe has hired Attorney Thomas Hornburg to represent him in his capacity as successor trustee of Petitioner's trust, and Mr. Hornburg has provided Mr. Rindlisbacher with a copy of a summary report of Petitioner's mental status as of April 2013 conducted by Alzheimer's & Memory Center. He has taken the position that Petitioner lacks the legal capacity to hire Mr. Rindlisbacher with her estate planning. See Exhibit G.

It is Petitioner's desire to terminate any authority she has granted to Mr. Rolfe or **JANELLE CHESKI-HILL** as an agent under her Durable Power of Attorney and to terminate any authority granted to Mr. Horswill, Mr. Rolfe, or Ms. Cheski-Hill as an agent under her Advanced Health Care Directive. See Revocations at Exhibits H and I.

Petitioner desires and intends to remove Mr. Rolfe as trustee of her trust and as executor under her will and to resume managing her own property. Petitioner wants to designate her longtime tax preparer **BILLIE MILES** as successor trustee of her trust and as executor. Petitioner also desires to remove Mr. Rolfe as a beneficiary under the trust and to leave the portion that was to go to him to two existing charitable beneficiaries. See Amendment at Exhibit J.

Legal Authorities: Petitioner cites Probate Code §4541, 4540, 4766, 4765. Probate Code §810 creates a rebuttable presumption that Petitioner has capacity to make decisions and be responsible for her own acts or decisions. Petitioner states she is not under conservatorship and there has never been a judicial adjudication that she lacks capacity. Petitioner wants to ensure that her desires regarding where she lives and how her estate is distributed are honored and desires to have an independent medical examination conducted by Dr. Howard Terrell, MD, of Clovis, CA, to assess her current legal capacity to contract, to make the desired changes to her estate plan, and to make medical and personal care decisions for herself. This medical assessment is critical because of the position being taken by Mr. Rolfe and others based on the April 2013 assessment. The estimated cost is $4,000.00.

See also Points and Authorities in Support of Petition.

Petitioner prays for the following orders:

1. **All Durable Powers of Attorney executed by Petitioner have been revoked and the power granted to any agents therein is terminated;**
2. **All Advanced Health Care Directives executed by Petitioner have been revoked and the power of any agents designated therein is terminated;**
3. **Petitioner Melinda Cordell has the legal capacity to make any and all health care decisions, including the decision as to where she will reside;**
4. **Such other orders as the Court deems appropriate.**

Phillip Rolfe's Opposition to Petition filed 3-14-14 states: This case concerns the health, safety and financial security of Petitioner Melinda Cordell, all of which are in jeopardy due to the overzealous "advocacy" of Petitioner's purported attorney Curtis Rindlisbacher. This case demonstrates a flaw in the ethical standards of the practice of law in the State of California whereby the estate of an at-risk elder in need of the utmost care can be placed in peril due to the "assistance" of an overly zealous advocate. This Court should dismiss the petition in its entirety for lack of legal basis for the relief requested, or in the alternative, dismiss the petition pursuant to Probate Code §§ 4543 and 4768, and terminate jurisdiction to grant Mr. Rindlisbacher any compensation from Petitioner's estate.

SEE ADDITIONAL PAGES

Objector states Petitioner was diagnosed with dementia less than a year ago on 4-17-13 by Alex Sherriffs, M.D., and Marcy Johnson, Ph.D., of the UCSF Fresno Alzheimer's & Memory Center. Petitioner presently resides in the dementia unit of Somerford Place Alzheimer's Assisted Living Facility in Fresno. On or about 2-3-14, Attorney Rindlisbacher met with Petitioner for the first time in the dementia unit of her assisted living facility. During this consultation, Petitioner was allegedly convinced that her trusted friend of many years, Respondent Phillip Rolfe, was not acting in her best interests. Howevre, the true facts are that Mr. Rolfe has prudently and successfully managed Petitioner's finances since he was appointed as sole trustee of her trust and as her Attorney-in-Fact since 9-19-12. Mr. Rolf states he only accepted this role out of deep care and concern for his friend and colleague of many years and because he knew there was no one else who would help her and ensure her proper care.

Objector states that contrary to the "factual background" carefully crafted by Mr. Rindlisbacher, Petitioner voluntarily gave up control of her personal finances and health care decisions and appointed Mr. Rolfe as her trustee because she was suffering from early onset dementia, and due to her inability to care for herself, had become malnourished and had fallen at her home. During her treatment, her impaired mental capacity was discovered. With the assistance of her longtime attorney Joseph Horswill, Petitioner executed the documents necessary to ensure her continued health and financial protection by Mr. Rolfe. Mr. RIndlisbacher was notified of these facts in writing by both Mr. Horswill and Mr. Rolfe's attorney, and Mr. Rindlisbacher was provided with a copy of the detailed assessments and recommendations made by the UCSF Fresno Alzheimer's & Memory Center. See Objection for details of the assessments.

Objector states the Court lacks authority to grant the relief requested with respect to the POA and should deny the petition in its entirety. Petitioner refers to only Probate Code §4541(a) for determination of whether the POA "<u>is in effect or has terminated</u>." However, Probate Code §4541(d) clearly provides that determination that a POH has been "<u>revoked</u>" requires a judicial determination of <u>all</u> of the following: the attorney-in-fact has violated or is unfit to perform the fiduciary duties; at the time of the determination, the principal lacks capacity to give or revoke a POA; the revocation of the attorney-in-fact's authority is in the best interest of the principal or the principal's estate.

There are no allegations that Mr. Rolfe is unfit and the facts would not bear this out. There is no allegation that Petitioner lacked capacity to execute the POA originally in 2012. To the contrary, Petitioner alleges that she is capable. Finally, there is no allegation that the revocation is in the best interest of the principal. Mr. Rolfe has prudently managed Petitioner's estate since he accepted the role of her fiduciary.

Objector states if Petitioner is truly seeking relief under §4541(a) as alleged, then Petitioner has failed to allege any facts as to why the POA would not be effective. Petitioner has failed to allege that said document was not executed by Petitioner or that Petitioner was not capable at the time of execution. There is no allegation that Mr. Rolfe or any other agent has terminated his or her authority thereunder. There is simply no authority to grant the requested relief under §4541 or any other section of the Probate Code with respect to the POA and therefore the petition should be denied.

Objector states the Court should dismiss the petition with respect to the POA because these proceedings are not reasonably necessary for the protection of Petitioner's financial interests. With respect to a petition filed under §4541, §4543 provides in part that the court may dismiss a petition that is not reasonably necessary for the protection of the interests of the principal or the principal's estate. Petitioner has failed to allege any factual basis to support the contention that this petition is reasonably necessary for the protection of her financial interests or estate. The reason for this deficiency is because there are no facts to support such a contention. Assuming Petitioner has standing to institute these proceedings, that does not mean that there are any grounds for the relief requested. Mr. Rolfe has prudently invested the assets of Petitioner and meticulously accounted for each and every expenditure made for her benefit since he assumed the role of her fiduciary.

<u>SEE ADDITIONAL PAGES</u>

Objector states there is a very real possibility that due to Petitioner's relatively meager assets, her estate will not be sufficient to provide for her necessary care for the rest of her life. Any drain on these assets by frivolous proceedings such as these will be catastrophic for Petitioner's prospects of continuing to receive the standard of care that she enjoys and requires in light of her age and condition. Thus, this petition and the costly independent medical evaluation requested by Petitioner herein are simply not reasonably necessary and should be dismissed pursuant to §4543.

This petition should be dismissed and any subsequent requests by Mr. Rindlisbacher to recoup his fees or costs from Petitioner's estate should be denied.

Objector states the Court lacks authority to grant the relief requested with respect to the Advanced Health Care directive and should therefore deny the petition in its entirety. Petitioner cites only §§ 4766(a)&(b) and requests a judicial determination that all Advanced Health Care Directives executed by petitioner have been revoked and the power of any agents designated therein is terminated. Probate Code §4766(d) actually relates to termination of the authority of an agent with respect to an advanced health care directive and provides that a petition may be brought for the purpose of declaring that authority is terminated upon determination that the agent has violated, failed to perform, or is unfit, etc., <u>and</u> that at the time of the determination by the court, the patient lacks capacity to execute or revoke same.

Here, there are no allegations that the health care agent authorized anything illegal or that the agent has engaged in any negligence or misconduct. Based on the facts alleged, there is no authority to grant the relief requested and the petition should be denied.

Objector states the Court should dismiss the petition because the proceedings are not reasonably necessary for the protection of Petitioner as a patient. Petitioner fails to allege any factual basis to support the contention that this petition is reasonably necessary for Petitioner's protection. Assuming Petitioner has standing to initiate these proceedings, that does not mean there are grounds for the relief requested. Petitioner is receiving sufficient care with the assistance of her health care proxy. She is currently residing in a facility capable of providing the care she requires and under the continued prudent financial management of Mr. Rolfe, it is anticipated that she will have the resources to remain there.

Petitioner lacks capacity to make her own financial or health care decisions, and therefore lacks the ability to revoke the POA or the Advanced Health Care Directive. See details and authority in Opposition.

Objector states the additional examination requested by Petitioner is unnecessary and would be a substantial and unnecessary burden on her estate. See letter from physician dated 11-27-12 and patient summary report referenced above dated 4-17-13. These evaluations included a physical and neuropsychological evaluations, a multidisciplinary team conference and a comprehensive interview with Ms. Cheski-Hill, Petitioner's good friend and agent for health care, and someone who has spent much time with her over the years. Dementia is a progressive disease and symptoms gradually worsen over time and cannot be reversed, only managed. In light of the very recent diagnosis and the progressive nature of the disease, it would be both medically unnecessary and a wasteful financial burden on Petitioner's estate to allow for the costs of the requested assessment.

Objector states Petitioner was incapable of contracting for legal services; therefore, Mr. Rindlisbacher is not Petitioner's attorney and the Court should terminate jurisdiction to award attorney's fees to Mr. Rindlisbacher. Authority provided.

<u>SEE ADDITIONAL PAGES</u>

Mr. Rolfe respectfully requests that this Court:

1. **Dismiss the Petition to Determine Whether Health Care Directive has Terminated; OR IN THE ALTERNATIVE, order that the Health Care Directive has not been revoked or terminated;**
2. **Dismiss the Petition to Determine Whether Durable Power of Attorney has terminated, OR IN THE ALTERNATIVE, order that the Durable Power of Attorney has not been revoked or terminated;**
3. **Terminate the Court's ability to award attorney's fees and costs to Attorney Rindlisbacher in this matter; and**
4. **Such other orders as the Court deems appropriate.**

Response filed by Attorney Horswill (represented by Attorney Joseph F. Foares of Tulare) filed 3-14-14 states: Mr. Horswill has been the attorney representing Petitioner Melinda Cordell for over 15 years. Mr. Horswill provided estate planning for Ms. Cordell during that time period and has had numerous discussions with her over the years as to her desires to live out her life. These desires were set forth not only in the prior will and powers of attorney executed by Ms. Cordell, but later, and most recently, in 2010 and thereafter when she drafter her revocable living trust and powers of attorney which remain in effect as of the date of the petition. As set forth in Mr. Horswill's declaration, Mr. Horswill believes it is in Ms. Cordell's best interest to have the estate planning documents that she executed in 2010 and her subsequent resignation executed in 2012 remain in effect.

Mr. Horswill states the issue of the attorney's duty to his client once the client becomes incapacitated is one that is somewhat complicated and not specifically addressed in the Ethical Rules of Professional Responsibility. Mr. Horswill requests the Court take judicial notice of the ethics opinion from the Bar Association of San Francisco with regard to Model Rule 1.14(b) – If the attorney reasonably believes that the client cannot act in the client's own interest, the attorney may take appropriate protective measures to preserve the client's personal property.

Mr. Horswill states he has been providing Ms. Cordell legal representation for over 15 years and has come to know her very well. Over the course of the last 12-18 months, Mr. Horswill has seen a steady decline in her physical and mental state, so much so, that he determined that she was no longer able to act in her own best interest. As a result, Mr. Horswill contends she is best served to now rely on her estate plan, allowing Mr. Rolfe to handle her affairs, as he has been doing so diligently and competently in the past. Further, Mr. Horswill believes that the status quo of her estate plan best serves her needs and that she should remain as a resident of Somerford Place, but will abide by any orders the Court issues on her behalf.

SEE ADDITIONAL PAGES

Declaration filed concurrently by Attorney Horswill states: Mr. Horswill does not intend nor attempt to breach Ms. Cordell's rights to her attorney-client privilege. The below statements are stated in generalities and are not specific details of conversations or work-product. Mr. Horswill respectfully requests the Court allow him to supplement the declaration in camera. Mr. Horswill states he met Ms. Cordell in or about February 1997 when she requested his assistance in a bankruptcy matter. From that date forward, he has had numerous conversations with her either in his office or at her residence. In March 1998 he prepared estate planning documents for Ms. Cordell pursuant to her request consisting of a will and powers of attorney for finances and health care. From March 1998 through March 2005, they had several different conversations regarding her estate planning and wishes as to actions to be taken should she become deceased or incapacitated. On or about March 2005, he prepared a new will to modify the terms of her prior will.

In July 2010, based on some inheritance received, Mr. Horswill's office prepared a trust entitiled "The Melinda Cordell 2010 Trust dated August 13, 2010." Pursuant to many discussions, the POA for finances and health care were also revised. Ms. Cordell expressed unequivocal confidence in her friend Phillip Rolfe to be the trustee and handle administration should she become deceased or incapacitated. As to the general power of attorney, she once again expressed confidence in her friend Phillip Rolfe and her friend Janelle Cheski-Hill as agent in fact. For health care, Mr. Horswill states he reluctantly agreed to act as agent with Mr. Rolfe as alterantive agent. Later Mr. Rolfe was named as sole agent under both as well as trustee.

Mr. Horswill states that on or about September 2012, Ms. Cordell suffered an injury and her health began to significantly decline. While she may or may not have been incompetent at that time, she nevertheless agreed to resign her position as trustee and allow Mr. Rolfe to serve as trustee and handle her finances from that point forward. It is Mr. Horswill's belief that this was a proper and courageous decision by Ms. Cordell given her decline in health.

Throughout 2012-2013, Mr. Horswill states he met with Ms. Cordell on a number of occasions, and at each visit felt her health had declined from the previous visit. In early 2013, he found her somewhat confused and incoherent, and determined it was not in her best interest to make further changes to her estate planning after his last meeting with her by phone in November 2013. His suspicions were confirmed when he received the medical evaluation. Throughout the middle and later part of 2013, Mr. Horswill received a significant amount of phone calls from Ms. Cordell requesting to terminate the trsut and that she be allowed to move to "her home" in Colorado. Although Mr. Horswill indicated to her on those occasions that she does not own property in Colorado, she insisted that she did, which further supported his belief that she was unable to handle her affairs.

Mr. Horswill states that he has found Mr. Rolfe to be a very competent and compassionate person. He has taken over duties as successor trustee and has done an outstanding job. This includes his assistance in placing Ms. Cordell at Somerford Place, which in Mr. Horswill's opinion is an appropriate place for her to reside. Based on his prior relationship and conversations with Ms. Cordell over the last 15 years, Mr. Horswill believes it is in Ms. Cordell's best interest to remain at Somerford Place and to retain Mr. Rolfe as successor trustee as he has done so diligently in the past, all without any compensation for his work.

Mr. Horswill feels this litigation filed by Mr. Rindlisbacher threatens not only to undermine Ms. Cordell's estate planning as she intended it to be, but also could have a substantial effect on her capacity to meet those needs.

SEE ADDITIONAL PAGES

"Joseph Lewis Horswill's Response to the Petition in Support of his Response to Principal's Petition to Determine Whether Advance Health Care Directive has Terminated; Petition to Determine Whether Durable Power of Attorney has Terminated" filed 3-28-14 states: Mr. Horswill has represented Ms. Cordell for over 15 years and during that time has had numerous discussions with her as to her desires to live out her life. These desires were set forth not only in the prior Will and Powers of Attorney executed by Ms. Cordell, but later, and most recently, in 2010, and thereafter, when she drafted her revocable living trust and powers of attorney which remain in effect as of the date of the petition. Mr. Horswill believes it is in the best interest of Ms. Cordell to have the estate planning documents she executed in 2010 and her subsequent resignation as trustee, executed in 2012, remain in effect. Mr. Horswill has the obligation to take protective matters to respect and to carry out his clients wishes if incapacitation occurs. See authority re duty.

"Phillip Rolfe's Verified Opposition to Petition to Determine Whether Health Care Directive has Terminated and Petition toDetermine Whether Durable Power of Attorney has Terminated; Memorandum of Points and Authorities Thereof" filed 4-16-14 states: The Court should dismiss this petition in its entirety for lack of legal basis for the relief requested or in the alternative dismiss the petition in its entirety pursuant to §§ 4543 and 4768 and terminate jurisdiction to grant Rindlisbacher any compensation from Petitioner's estate. Petitioner voluntarily gave up control of her finances and health care decisions and appointed Mr. Rolfe because she was suffering from early onset dementia. She had become malnourished and had fallen at her home. Her impaired mental capacity was discovered by treating physicians. With the assistance of her longtime attorney Mr. Horswill, Petitioner executed the documents necessary to ensure her continued health and financial protection by Mr. Rolfe. Mr. Rindlisbacher was notified of these facts in writing prior to the filing of this petition, and was also provided a copy of the detailed assessments and recommendations made by UCSF Fresno Alzheimer's & Memory Center less than one year ago.

The Court lacks authority to grant the relief with respect to the POA and should deny the petition in its entirety pursuant to Probate Code §4541. See details in Opposition.

The Court should dismiss the petition with respect to the POA because the proceedings are not reasonably necessary for the protection of Petitioner's financial interests pursuant to Probate Code §§ 4541, 4543.

The Court lacks authority to grant the relief requested with respect to the Advanced Health Care Directive and should therefore deny the petition in its entirety pursuant to Probate Code §4766.

The Court should dismiss the petition with respect to the Advanced Health Care Directive because these proceedings are not reasonably necessary for the protection of Petitioner as a patient pursuant to Probate Code §§ 4766, 4768.

Petitioner lacks the capacity to make her own financial or health care decisions and therefore lacks the ability to revoke the POA or Advance Health Care Directive. See Probate Code §§ 4609, 911, other authority cited.

The additional medical examination requested by Petitioner is unnecessary and would be a substantial and unnecessary burden on Petitioner's estate.

Petitioner was incapable of contracting for legal services; therefore, Rindlisbacher is not Petitioner's attorney and the Court should terminate jurisdiction to award attorney's fees to him.

SEE ADDITIONAL PAGES

Phillip Rolfe's Response to Ex Parte Petition to Set Matter for Hearing filed 5-7-14 states that on 3-25-14, the Court continued the matter and set status for 6-17-14 re completion of a new assessment. The Court further ordered that if the assessment was completed earlier said conference could be set before 6-17-14. Despite the fact that the court specifically ordered status conference in this matter, Petitioner filed an ex parte petition to set hearing. Mr. Rolfe requests the Court deny the request to set a contested hearing at this time, and requests that the Court set the ex parte hearing so that all parties may have the opportunity to be present so that further status may be scheduled.

6B Melinda Cordell (Durable Power Attorney) Case No. 14CEPR00159

Atty Rindlisbacher, Curtis D. (for Petitioner Melinda Cordell)
Atty Gaebe, C. Matthew (of Visalia, for Objector Phillip Rolfe – Attorney-in-Fact for Petitioner)
Atty Soares, Joseph F. (for Joseph Lewis Horswill – Respondent)

Ex Parte Petiion Regarding Mental Examination

Cont from: 062514		
	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	

MELINDA CORDELL filed an Ex Parte Petition for Order Regarding Mental Examination on 6-3-14.

The Court set the matter for hearing on 6-28-14.

Petitioner states she is being held against her will at Somerford Place of Fresno. She should have been allowed to move by Somerford Place of Fresno even if Phillip Rolfe disagreed. Now, even though Petitioner has revoked the powers she previously gave to Phillip Rolfe under a Durable Power of Attorney and Advance Health Care Directive, Petitioner continues to be held against her will pending another mental examination that Petitioner believes to be unneeded.

Petitioner states Probate Code §810 is intended to Protect people like Petitioner by providing a presumption affecting the burden of proof that she has mental capacity to make decisions for herself until a judicial determination has been made to the contrary. Rather, the burden is on Phillip Rolfe, Joseph Horswill, and Somerford Place of Fresno to seek a judicial determination that Petitioner lacks mental capacity. This they have never done. Despite these legal rules, Petitioner has been compelled to reside in a facility that is costing her more than $6,000/month. She has to expend her own monies to obtain a medical examination and retain him as an expert to help prove a fact that is presumed by the law. Now, despite the fact that he has concluded that Petitioner does not have dementia and that she has the mental capacity to make her own decisions, Petitioner continues to be held pending another mental examination.

SEE ADDITIONAL PAGES

NEEDS/PROBLEMS/COMMENTS:

Continued from 6-25-14

1. **Need filing fees of $435.00 from both Petitioner and Respondent.**

   (A fee for an ex parte petition not requiring hearing is $60. The fee for a petition requiring hearing is $435. The fee for response or objection is also $435. The response also requests relief.)

Reviewed by: skc
Reviewed on: 7-14-14
Updates:
Recommendation:
File 6B - Cordell

Attached is an email sent to Petitioner by Phillip Rolfe via Somerford Place of Fresno on 5-20-14. Despite Mr. Rolfe's admission that Petitioner has rallied and gotten her health back, and that he is not fighting her, Petitioner states Phillip Rolfe through his counsel has continued the fight.

At the hearing on 5-27-14, counsel for Phillip Rolfe indicated that they wanted another mental examination and there was some discussion that Petitioner would be responsible for the cost. This is not right. Petitioner should not be required to pay for an examination that Mr. Rolfe is requesting. He is the one contesting Petitioner's capacity.

Petitioner's attorney made a demand that the entirety of the mental examination be recorded by audio pursuant to CCP §2032.530. Mr. Rolfe's lawyer objected to the testing portion of the examination being recorded. Petitioner's lawyer has required a stipulation for a court order allowing the entirety of the examination to be recorded.

A preliminary consultation was scheduled with Dr. Sandra Sha at the Stanford Neurological Clinic, which is more than 75 miles from Petitioner's residence. Dr. Sha has refused to perform the mental examination due to the demand that the entirety of the examination be recorded as provided by California law.

Counsel for Mr. Rolfe has characterized the demand by Petitioner's attorney as "overly burdensome" despite California law to the contrary. Nothing in California law allows the examiner or examinee to limit the recording to only parts of the examination. Authority provided. The examining expert should be ordered to record the examination rather than require Petitioner to provide her own recording equipment to avoid disruption of the examination. In addition, absent a showing of good cause, Petitioner cannot be compelled to travel more than 75 miles.

Phillip Rolfe has no legal authority to use Petitioner's own funds to pay for the costs of this additional mental examination. He is the one contesting Petitioner's mental capacity and it is his burden to prove. Petitioner's funds should not be used to pay for another expert to examine her.

Petitioner requests that the Court order as follows:

1. **That any expert hired to conduct a mental examination of Petitioner by Phillip Rolfe be required to record by audio technology the entirety of the mental examination and provide a copy to Petitioner's attorney;**
2. **That Phillip Rolfe not use any portion of Petitioner's assets to pay for the expert hired by him to conduct a mental examination of Petitioner;**
3. **That the place of such examination not be more than 75 miles from Petitioner's residence; and**
4. **Such additional orders as the Court deems proper.**

SEE ADDITIONAL PAGES

Phillip Rolfe filed a Response on 6-4-14. Mr. Rolfe states Petitioner's purported attorney has brought this petition in bad faith and in an attempt to delay these proceedings, thwart the Court's order mandating that Petitioner receive a comprehensive, independent mental assessment and examination regarding competency, and to seek reconsideration of this Court's previous orders without cause and without conforming to proper procedure. The Court should deny the requested relief, order that Petitioner's comprehensive mental assessment and examination previously scheduled at Stanford Center for Memory Disorders Clinic proceed forthwith without audio recordation, and order monetary sanctions against Petitioner's purported attorney personally pursuant to CCP §§ 128.5, et seq. See response for specific details and authority.

Respondent requests the Court:

1. **Deny all relief requested in the petition;**
2. **Order the comprehensive, independent mental assessment and examination of competency of the Petitioner to proceed forthwith without recordation; and**
3. **The Court order Petitioner's purported attorney to personally pay monetary sanctions directly to Houk & Hornburg, Inc., a sum representing Respondent's actual fees and costs incurred in responding to the Petition in an amount according to proof at the time of hearing.**

Petitioner filed a Reply to the above Response on 6-5-14. Petitioner states while there was discussion about Mr. Rolfe having Melinda Cordell examined by a doctor from either Stanford or UC Davis, there was no discussion of a particular doctor, place, conditions, scope, or nature of the examination. Petitioner's counsel believed this would be forthcoming from Mr. Rolfe's counsel and that he would have opportunity to raise concerns or objections prior to any mental examination being conducted. There was no discussion of Melinda Cordell's right under CCP §2032.530 to have the entirety of the mental examination recorded by audio technology. Mr. Rolfe has not served Ms. Cordell with a motion requesting additional examination as required under CCP §2032.310 that specifies the time, place, manner, conditions, scope, and nature of the examination as well as the identity and specialty, if any, of the person or persons who will perform the examination. Mr. Rolfe has not shown a reasonable and good faith attempt at an informal resolution of each issue addressed by the motion as well as CCP §2016.040. The Court has not entered any order specifying the person or persons who may perform the examination requested by Mr. Rolfe. Ms. Cordell has objected to the necessity of this additional examination. After being advised of her right to have it recorded, she has expressed a desire to record so that her counsel can evaluate for purposes of trial in this matter.

Petitioner states the request for sanctions is misplaced. At the status hearing on 5-27-14, there was no motion before the Court. It was a status hearing regarding completion of the examination by Dr. Terrell. There was no ruling made by the Court for which a motion for reconsideration could be made regarding the specific issues required in any such order under CCP §2032.320. Rather, the Court continued the matter for further status hearing on 6-17-14 regarding the status of the additional mental examination being requested by Mr. Rolfe. Contrary to Mr. Rolfe's contention that Petitioner's ex parte petition was filed unnecessarily to delay the proceedings, it was filed precisely to obtain a speedy resolution to the issues regarding payment for the additional medical examination and issues related to Petitioner's rights to have the entirety of the examination recorded by audio technology and the location of any such exam. Petitioner requests the Court deny Respondent's request for monetary sanctions against Petitioner's attorney and enter such additional orders as it deems appropriate.

Dept. 303, 9:00 a.m. Wednesday, July 16, 2014

6C Melinda Cordell (Durable Power Attorney) Case No. 14CEPR00159

Atty Rindlisbacher, Curtis D. (for Petitioner Melinda Cordell)
Atty Gaebe, C. Matthew (of Visalia, for Objector Phillip Rolfe – Attorney-in-Fact for Petitioner)
Atty Soares, Joseph F. (for Joseph Lewis Horswill – Respondent)
Status Hearing

Cont from 061714, 062514		
	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	

MELINDA CORDELL filed Petition to Determine Whether Advance Health Care Directive has Terminated; Petition to Determine Whether Durable Power of Attorney has Terminated on 2-25-14.

Objections were filed by **PHILLIP ROLFE** and **JOSEPH LEWIS HORSWILL**.

Minute Order 5-27-14: The issue of accountings is reserved by the Court. Phillip Rolfe is ordered to provide Melinda Cordell copies of everything he receives including, but not limited to bank statements beginning 6/1/14. Continued to 6/17/14 @ 9:00 a.m. Dept. 303. Set on 6/17/14 @ 9:00 a.m. Dept. 303 for: Status Hearing

Minute Order 6-17-14: Further discussions regarding discovery are deferred.

NEEDS/PROBLEMS/COMMENTS:

Continued from 6-17-14, 6-25-14

Note: On 6-3-14, Melinda Cordell filed Ex Parte Petition for Order Regarding Mental Examination. Pursuant to Order 6-4-14, the petition was set for hearing on 6-25-14. Phillip Rolfe filed a Response on 6-4-14. See Page B.

Please note that because the petition was set for hearing, a filing fee of $435 is due from both Petitioner and Mr. Rolfe (for Response).

Minute Order 6-25-14: Parties agree that Melinda Cordell will be evaluated by UCSF in Fresno. The Court will allow an audio recording of the evaluation. The Court orders that the audio recording be sealed until further order of the Court and/or noticed hearing. Counsel is directed to prepare the order. The Court sets a status hearing regarding the additional evaluation for 7/16/14. The Court will address the issue of who will pay for the evaluation at that hearing. Matter is set for settlement conference on 7/15/14. Counsel is directed to submit their settlement conference statements along with a courtesy copy for the Court one week before the hearing. Mr. D'Angelo's appearance will not be required at the settlement conference. Continued to 7/16/14 @ 9:00 a.m. Dept. 303. Set on 7/15/14 @ 10:30 a.m. Dept. 303 for: Settlement Conference

Note: On 6-27-14, Melinda Cordell filed a Petition for Order Compelling Petitioner's Release from Locked Facility. Hearing has been set for 7-21-14 at 9:00 am in Dept. 303.

Reviewed by: skc
Reviewed on: 7-14-14
Updates:
Recommendation:
File 6C - Cordell

7A Triston Randal Gambell (GUARD/P) Case No. 14CEPR00258

Atty Walters, Jennifer L. (for Elvera Alarcon – maternal grandmother/Petitioner)

Atty Victoria, Desiree (pro per – non-relative (father's girlfriend)/competing Petitioner)

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

Age: 12		
Cont. from 060414		
	Aff.Sub.Wit.	
✓	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	x
	Aff.Mail	x
	Aff.Pub.	
	Sp.Ntc.	
✓	Pers.Serv.	w
✓	Conf. Screen	
✓	Letters	
✓	Duties/Supp	
	Objections	
	Video Receipt	
✓	CI Report	
	9202	
✓	Order	
	Aff. Posting	
	Status Rpt	
✓	UCCJEA	
	Citation	
	FTB Notice	

TEMPORARY OF DESIREE VICTORIA EXPIRES 07/16/14

ELVERA ALARCON, maternal grandmother, is Petitioner.

Father: **RANDALL GAMBELL** – *currently incarcerated; personally served on 04/07/12*
Mother: **NELIDA GARCIA** – *Consent & Waiver of Notice filed 03/27/14*

Paternal grandfather: THOMAS GAMBELL – deceased
Paternal grandmother: MELANIE GAMBELL - *deceased*

Maternal grandfather: JESUS CONTRERAS GARCIA – *Declaration of Due Diligence filed 04/07/14*

Petitioner alleges that the father was arrested after his home was raided due to his drug dealing. The minor has been left in the care of the father's girlfriend who petitioner also suspects uses and deals drugs. Petitioner states that Triston's mother is also a drug addict.

Court Investigator JoAnn Morris filed a report on 05/22/14.

Continued on Page 2

NEEDS/PROBLEMS/COMMENTS:

CONTINUED FROM 06/04/14
Minute Order from 06/04/14 states: Ms. Walters is appearing as counsel for Elvera Alarcon. Parties agree to participate in mediation today at 10:00 am.

See page 7B for competing petition.

1. Need *Notice of Hearing*.
2. Need proof of service at least 15 days before the hearing of *Notice of Hearing* with a copy of the *Petition for Guardianship* or Consent & Waiver of Notice or Declaration of Due Diligence for:
   a. Triston Gambell (minor) – Personal service required
   b. Jesus Contreras Garcia (maternal grandfather) – service by mail sufficient (Declaration of Due Diligence filed 04/07/14 states his whereabouts are unknown and Petitioner has not seen him since 1991)

Reviewed by:	JF
Reviewed on:	07/11/14
Updates:	
Recommendation:	
File	**7A – Gambell**

Supplemental Declaration of Elvera Alarcon filed 06/03/14 states: The mother, Nelinda Garcia signed a Consent and Waiver of Notice on 03/27/14 and a letter addressing her wishes is attached to this declaration (attachment missing). Triston and Petitioner have always shared a close bond. He is autistic and has a difficult time understanding what is going on around him. He has a tendency to say whatever his questioner wants to hear and will repeat himself when he is uncomfortable or scared. Before his father was arrested, Triston would stay with Petitioner for several days at a time. It was normal for petitioner to provide clothes and hygiene products for Triston. During their last visit, Triston told Petitioner that he didn't want to be responsible for breaking up his dad's home. He stated that if he came to live with Petitioner it would be his fault. Petitioner does not know who told him this, but does not believe that this is a weight that a 12 year old boy should bear, especially one who has a difficult time working through his emotions to begin with. Petitioner states that she has not been able to visit with Triston since the temporary guardianship was granted at the last hearing. Petitioner believes that this is detrimental to Triston and also sad because he does not have any other family to lean on during these difficult times.

Beginning January 2014, Triston began receiving $877.40 in SSI each month. Petitioner has great concern as to where these funds are going as Desiree is not working and Triston wears clothes and shoes that are too small for him. Petitioner believes the reason Desiree is resistant to letting Triston live with her is because she cannot afford to take care of her other children without Triston's income. Petitioner states that she does not need the money and if given guardianship of Triston, she would have no problem putting the money away for Triston's future.

Triston's father, Randall Gambell, was arrested in their home for possessing both drugs and a loaded firearm in the home. The home was raided on 03/14/14 and Randall has been incarcerated ever since. Petitioner is concerned that Desiree is still in a relationship with Randall and is awaiting his release and return to their home. Randall has been using and dealing drugs for as long as Petitioner has known him and Petitioner has no doubt it will continue in the future.

Petitioner prays for a Court order granting guardianship to her as it is in his best interest and better for his safety.

7B **Triston Randal Gambell (GUARD/P)** **Case No. 14CEPR00258**

Atty **Alarcon, Elvera (pro per – maternal grandmother/Petitioner)**

Atty **Victoria, Desiree (pro per – non-relative (father's girlfriend)/competing Petitioner**

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

Age: 12

Cont. from 060414

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

TEMPORARY EXPIRES 06/04/14

DESIREE VICTORIA, father's girlfriend, is petitioner.

Father: **RANDALL GAMBELL** – *currently incarcerated; Consent & Waiver of Notice filed 04/07/14*
Mother: **NELIDA GARCIA** – *Declaration of Due Diligence filed 04/16/14*

Paternal grandfather: THOMAS GAMBELL – deceased
Paternal grandmother: MELANIE GAMBELL - *deceased*

Maternal grandfather: JESUS CONTRERAS GARCIA
Maternal grandmother: ELVERA ALARCON – *personally served on 04/16/14*

Petitioner alleges that Triston has resided with her and his father. His father was arrested on 03/14/14, after his arrest, the maternal grandmother filed for guardianship without notifying anyone. Petitioner states that Triston's father wants him to stay in his home with her and her children. Petitioner states that Triston needs to be protected from any forces than can displace him from his home.

Court Investigator JoAnn Morris filed a report on 05/22/14.

NEEDS/PROBLEMS/COMMENTS:

CONTINUED FROM 06/04/14
Minute Order from 06/04/14 states: Ms. Walters is appearing as counsel for Elvera Alarcon. Parties agree to participate in mediation today at 10:00 am.

3. Need proof of service by mail at least 15 days before the hearing of *Notice of Hearing* with a copy of the *Petition for Guardianship* or Consent & Waiver of Notice or Declaration of Due Diligence for Jesus Contreras Garcia (maternal grandfather).

Reviewed by: JF

Reviewed on: 07/11/14

Updates:

Recommendation:

File 7B – Gambell

Dept. 303, 9:00 a.m. Wednesday, July 16, 2014

8 **Davis 1989 Family Trust (Trust)** **Case No. 14CEPR00298**

Atty **Burnside, Leigh W. (for Petitioner Joshua Davis – Beneficiary)**

Petition for Order Compelling Trustee to Account and Report

Thomas J. Davis DOD: 6-5-00		
Wealthea Davis DOD: 3-25-98		
Cont from 051914, 061814		
	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	

JOSHUA DAVIS, Beneficiary, is Petitioner.

Petitioner states he is a beneficiary of the Davis 1989 Family Trust dated 11-17-89 (the Trust) (Exhibit A). On or about the same date, Thomas and Wealthea Davis also created the **Davis Family 1989 Life Insurance Trust (the Insurance Trust) (Exhibit B)**. The Family Trust became irrevocable on the settlors' deaths. The Insurance Trust was already irrevocable during their lifetimes. Petitioner states **BRUCE NEILSEN** is the successor trustee of both trusts.

Petitioner states that following the death of Thomas Davis on 6-5-00, Petitioner, by his agent and CPA Tom Bell, inquired of Trustee Neilsen on multiple occasions about the nature of the Trust assets and timetable for distribution. Petitioner was aware that the decedents had owned real property in California, various stocks and bonds, as well as other assets to which Petitioner and the other named in this petition were beneficiaries.

Petitioner has requested that Trustee Neilsen provide him with an account of his administration of the Trust, but Trustee Neilsen has not done so. Additionally, Petitioner believes portions of the trust property that were to be held fbo Trust beneficiaries and Insurance Trust beneficiaries have been used to make loans to beneficiaries other than Petitioner, all to the detriment of Petitioner and other beneficiaries who may have lost their share of Trust and Insurance Trust assets as a result of the breach of his duties to the beneficiaries by Trustee Neilsen.

SEE ADDITIONAL PAGES

NEEDS/PROBLEMS/COMMENTS:

Continued from 5-19-14, 6-18-14

As of 7-11-14, nothing further has been filed.

SEE ADDITIONAL PAGES

Reviewed by: skc

Reviewed on: 7-11-14

Updates:

Recommendation:

File 8 - Davis

Petitioner states moreover, Trustee Neilsen has failed to require the execution of notes requirement repayments by the borrowers of the Trust and Insurance Trust assets, and/or that Trustee Neilsen has failed to require the repayment of principal and interest on the Trust and Insurance Trust monies by the borrowers, all to the detriment of Petitioner and the other beneficiaries.

Petitioner states the Trust estate was to be divided into 12 separate trusts immediately on the death of both settlors. Petitioner made inquiries of Trustee Neilsen as to what is held in the trust created for Petitioner, but Trustee Neilsen has not provided the requested information or any meaningful response. Petitioner is informed and believes that Trustee Neilsen has, without consent or knowledge of several of the beneficiaries, used Trust and/or Insurance Trust assets to fund business transactions initiated by other beneficiaries, all to the detriment of Petitioner and other beneficiaries.

Petitioner has been unable to determine what has been done with what portion of the Insurance Trust assets and the Trust assets which were to have been segregated from the rest of the Trust property and Insurance Trust property for Petitioner's benefit.

Petitioner requests the Court order as follows:

1. Directing Trustee Bruce Neilsen to prepare and file a complete account and report of his administration of the Davis 1989 Family Trust and the Davis 1989 Life Insurance Trust for the period of June 6, 2000 through March 31, 2014, inclusive;

2. Directing Trustee Bruce Neilsen to set the Account and Report for hearing and give notice of same pursuant to §17203;

3. Awarding Petitioner reasonable attorneys' fees and costs incurred in this matter; and

4. Granting any and all other relief as the Court deems just and proper.

SEE ADDITIONAL PAGES

NEEDS/PROBLEMS/COMMENTS:

1. This petition requests accountings for two separate trusts. The two separate trusts have separate terms, separate assets, and separate purposes, and as such consideration by the Court requires separate petitions, separate notice, separate files, separate filing fees, and ultimately separate accountings.

   The Court may designate this case number as the Family Trust file and direct Petitioner to initiate a separate proceeding regarding the Life Insurance Trust.

2. Also, per its terms, the Family Trust was to immediately divide into *twelve (12) separate trusts*, only one of which was for Petitioner's benefit. Need clarification and authority regarding the scope of the request for accounting(s).

   Note: The language in the instruments differentiates between division into separate trusts and into separate shares, as contemplated by the Life Insurance Trust.

3. Notice appears to have been mailed to six people as couples, rather than as individuals entitled to direct notice. The Court may require amended direct service pursuant to Cal. Rules of Court 7.51.

4. Probate Code §17200(b)(7) provides that the Court can compel the trustee to provide information or account if the trustee has failed to provide the requested information within 60 days after the beneficiary's reasonable written request. Here, Petitioner states that he requested information after the settlors' deaths, which was approx. 14 years ago, but Petitioner does not state if any recent written request was made pursuant to §17200(b)(7), or what response was received, if any, pursuant to the written request. The Court may require clarification as to whether this petition may be prematurely filed pursuant to §17200(b)(7) and may require continuance for formal request and response. (Note: The requests should be separated for each trust pursuant to the above items.)

9 Jennifer A. M. Foster (Estate) **Case No. 14CEPR00513**

Atty Willoughby, Hugh W (for Phillip Foster – Petitioner)

Petition for Letters of Administration; Authorization to Administer Under IAEA (Prob. C. 8002, 10450)

DOD: 09/01/2013			**PHILLIP A. FOSTER,** is petitioner and requests appointment as administrator with bond set at $140,000.00.	**NEEDS/PROBLEMS/COMMENTS:**
			Full IAEA – o.k.	1. Petitioner is not listed on #8 of the petition as required and it is unclear what the relationship is to the decedent.
Cont. from			Decedent died intestate	2. Need Letters.
	Aff.Sub.Wit.		Residence: Fresno Publication: The Business Journal	
✓	**Verified**		**<u>Estimated value of the Estate:</u>** Real property - $140,000.00 <u>(Less Encumbrances - $150,000.00)</u> **Total: -$10,000.00**	**<u>Note:</u> If the petition is granted status hearings will be set as follows:**
	Inventory		Probate Referee: Rick Smith	•**Wednesday, 08/13/2014 at 9:00a.m. in Dept. 303** for the filing of the bond **<u>and</u>**
	PTC			**Wednesday, 12/17/2014 at 9:00a.m. in Dept. 303** for the filing of the inventory and appraisal **<u>and</u>**
	Not.Cred.			• **Wednesday, 09/16/2015 at 9:00a.m. in Dept. 303** for the filing of the first account and final distribution.
✓	**Notice of Hrg**			Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior to the hearings on the matter the status hearing will come off calendar and no appearance will be required.
✓	**Aff.Mail**			
✓	**Aff.Pub.**			
	Sp.Ntc.			
	Pers.Serv.			
	Conf. Screen			
	Letters	x		
✓	**Duties/Supp**			
	Objections			
	Video Receipt			
	CI Report			
	9202			
✓	**Order**			
	Aff. Posting			**Reviewed by:** LV
	Status Rpt			**Reviewed on:** 07/14/2014
	UCCJEA			**Updates:**
	Citation			**Recommendation:**
	FTB Notice			**File 9 - Foster**

Dept. 303, 9:00 a.m. Wednesday, July 16, 2014

10 Thalia I. West (Det Succ) **Case No. 14CEPR00515**

Atty **Porter, Tres A. (for Glenda West – Petitioner – Daughter)**

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

DOD: 06/20/2010			**GLENDA WEST** and **CYNTHIA WEST (PILAND)**, daughters, are petitioners.
			40 days since DOD
Cont. from			No other proceedings
	Aff.Sub.Wit.		
✓	**Verified**		I&A - **$110,000.00**
	Inventory		Decedent died intestate
	PTC		
	Not.Cred.		Petitioners request Court determination that decedent's100% interest in real property located at 3145 W. McKinley Ave. Fresno, Ca. pass ½ to Glenda West and ½ to Cynthia West pursuant to intestate succession.
✓	**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		

NEEDS/PROBLEMS/COMMENTS:

1. #9a(2) of the petition indicates that the decedent's spouse is deceased. Pursuant to Local Rule 7.1D the name and date of death of the decedent's spouse is required.
2. #9a(3) or #9a(4) of the petition was not answered regarding registered domestic partner.
3. #9a(6) or #9a(7) of the petition was not answered regarding issue of a predeceased child.

Reviewed by: LV

Reviewed on: 07/14/2014

Updates:

Recommendation:

File 10 - West

Dept. 303, 9:00 a.m. Wednesday, July 16, 2014

11 Jesse Felix Castro (CONS/PE) **Case No. 06CEPR01119**

Atty **Perez, Holley H**

Status Hearing Re: Accounting

Age:			**NEEDS/PROBLEMS/COMMENTS:**
DOD:			**OFF CALENDAR. Third Account filed 07/10/2014. Hearing is set for 08/11/2014.**
Cont. from			
	Aff.Sub.Wit.		
	Verified		
	Inventory		
	PTC		
	Not.Cred.		
	Notice of Hrg		
	Aff.Mail		
	Aff.Pub.		
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
	Letters		
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
	9202		
	Order		
	Aff. Posting		**Reviewed by:** LV
	Status Rpt		**Reviewed on:** 07/14/2014
	UCCJEA		**Updates:**
	Citation		**Recommendation:**
	FTB Notice		**File 11 - Castro**

Dept. 303, 9:00 a.m. Wednesday, July 16, 2014

12 Michael W. Roberts (Estate) Case No. 12CEPR00290

Atty **Donaldson, Larry A. (for Kenneth Roberts – Administrator)**

Status Hearing Re: Filing of the Petition for Final Distribution

DOD: 02/24/2012		
Cont. from 122013, 010214, 031314, 043014, 060414		
	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	

KENNETH ROBERTS, was appointed Administrator with full IAEA and with bond set at **$20,000.00** on 10/18/2012.

Proof of Bond was filed 2/22/2013 showing bond posted in the sum of **$20,000.00.**

Letters issued on 03/14/2013.

Final Inventory and Appraisal filed on 10/15/2013 shows an estate valued at **$129,764.97**.

***Minute Order* of 10/18/2012** set this matter for hearing on 12/20/2013 for status of filing for final distribution.

***Minute Order* dated 12/20/2013** [Judge Snauffer] states: No appearances. Matter continued to 1/2/2014. The Court orders Larry Donaldson to be personally present on **1/2/2014**.

Former Status Conference Statement filed 03/04/2014 by Attorney Larry A. Donaldson states that the accounting for the estate has been partially prepared but is not completed yet. The Administrator and heirs have not yet decided whether to sale or transfer the real property in the estate. The house is the only asset left in the estate. The Administrator of the estate, Ken Roberts, has lent the estate more than $9,000. Ken Roberts is serving as Administrator without compensation and waives all fees that would normally be paid to him. Attorney Donaldson also waives all fees that would normally be paid for his services. There are no other assets other than the real property to pay back to the money loaned to the estate. Attorney Donaldson will be out of the county from 03/04/2014 through 03/12/2014 and unavailable to complete the paperwork to finish the accounting. Attorney Donaldson anticipates that the accounting will be completed and the estate in a condition to close by April 30, 2014.

NEEDS/PROBLEMS/COMMENTS:

Continued from 06/04/2014.

Minute Order of 04/30/2014: Counsel advises the Court that he now has all the paperwork needed to file the required documents.

1. Need First Account or Petition for Final Distribution or current written status report pursuant to Local Rule 7.5 which states in all matters set for status hearing verified status reports must be filed no later than 10 days before the hearing. Status Reports must comply with the applicable code requirements. Notice of the status hearing, together with a copy of the Status Report shall be served on all necessary parties.

Reviewed by: LV

Reviewed on: 07/11/2014

Updates:

Recommendation:

File 12 – Roberts

13 James Blanco (Estate) Case No. 13CEPR01102

Atty **Petty, Teresa B (for Ricardo Garcia – Administrator)**

Status Hearing Re: Bond

DOD: 06/30/2011	**RICARDO GARCIA,** brother was appointed Administrator. Minute Order of 03/19/2014 set this matter for hearing. **Minute Order of 03/19/2014** states Counsel is directed to obtain the necessary bond waivers or a bond in the amount of $10,000.00. The petition is granted. **Minute Order of 06/18/2014 (Judge Cardoza):** Bond is set at $10,000.00	**NEEDS/PROBLEMS/COMMENTS:** 1. Need $10,000.00 bond pursuant to Minute Order of 06/18/2014 (Judge Cardoza). **Note:** A Disclaimer of Interest by Rosa Sapien, Harvey Blanco, Rosendo Garcia and Jackeline Blanco state that they also disclaim all of the rights of her minor children to the decedent's estate. A disclaimer cannot be made by a parent on behalf of a minor child unless they have been appointed as guardian of the state or guardian ad litem after a noticed hearing pursuant to Probate Code§ 277. **Note**: Pursuant to Intestate Succession the beneficiaries of the decedent's estate would be the parents, Hortencia Miranda and Modesto Blanco. Hortencia Miranda and Modesto Blanco have disclaimed their interest. **If a beneficiary disclaims their interest in the estate, the disclaimer acts as if the disclaiming party pre-deceased the decedent. See Probate Code §275 et seq. for disclaimers.** **A Disclaimer when effective is irrevocable pursuant to Probate Code §281.** **<u>Continued on additional page</u>**
Cont. from 043014, 061814		
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		**Reviewed by:** LV
Status Rpt		**Reviewed on:** 07/14/2014
UCCJEA		**Updates:**
Citation		**Recommendation:**
FTB Notice		**File 13 – Blanco**

13 (additional page) James Blanco (Estate) Case No. 13CEPR01102

Since Modesto Blanco (father) and Hortencia Miranda (mother) and all decedent's siblings except petitioner, Ricardo Garcia (issue of Hortencia and Modesto) disclaimed, the issue of decedent's siblings are now the intestate heirs of the Estate. The issue of the disclaiming siblings are as follows and would then be the intestate heirs along with Ricardo:

- Ashley Sapien - 18
- Mariah Sapien - 16
- Vanessa Sapien - 5
- Angel Blanco - 10
- Laurissa Barajas - 8
- April Clark - 17
- Suzie Clark - 13
- Harvey Isaac Blanco - 13
- Isaac Harvey Blanco - 13
- Samuel Blanco - 7
- Rosendo Garcia, Jr. – 8

Note: Order is in the file for the Court's signature once the appropriate documents have been filed.

Dept. 303, 9:00 a.m. Wednesday, July 16, 2014

14 Monica Rios & Nathaniel Rios (GUARD/P) **Case No. 05CEPR00810**

Atty Rios, Josefina (pro per Guardian/paternal grandmother)

Atty Garcia, Monica (pro per mother)

Status Hearing Re: Mediation

Monica age: 15	**MONICA GARCIA**, mother, is petitioned the court to terminate the guardianship. **JOSEFINA RIOS**, paternal grandmother, was appointed guardian on 7/8/05. **At the hearing on 6/28/14** the court (Judge Cardoza) denied the petition to terminate the guardianship. The parties agreed to go to mediation regarding it issue of mediation. This status hearing was set for the status of the mediation. **Copy of the mediation agreement was filed on 6/19/14.** The parties agreed that the mother shall have weekend visitation with Monica (the minor) and Nathaniel from Friday at 5:00 p.m. to Sunday at 5:00 p.m. at the mother's home. Other visits may occur by mutual agreement.	**NEEDS/PROBLEMS/COMMENTS:**
Nathanial age: 10		
Cont. from		
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		**Reviewed by: KT**
Status Rpt		**Reviewed on: 7/14/14**
UCCJEA		**Updates:**
Citation		**Recommendation:**
FTB Notice		**File 14 - Rios**

Dept. 303, 9:00 a.m. Wednesday, July 16, 2014

15 Heather Nicole Young (GUARD/P) **Case No. 07CEPR00054**

Atty Harrison, Cindy
Atty Young, Rachelle Diane
Atty Manfredo, Mario

Petition for Termination of Guardianship

Age:			NEEDS/PROBLEMS/COMMENTS:
DOD:			**OFF CALENDAR.** Guardianship was terminated on 6/13/14.
Cont. from			
	Aff.Sub.Wit.		
	Verified		
	Inventory		
	PTC		
	Not.Cred.		
	Notice of Hrg		
	Aff.Mail		
	Aff.Pub.		
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
	Letters		
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
	9202		
	Order		
	Aff. Posting		Reviewed by: KT
	Status Rpt		Reviewed on: 7/14/14
	UCCJEA		Updates:
	Citation		Recommendation:
	FTB Notice		File 15 - Young

16 Alicia Geneses Vindiola (GUARD/P) **Case No. 14CEPR00440**

Atty Coronado, Alma (pro per Petitioner)

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

Age: 10			**TEMPORARY EXPIRES 7/16/14**	**NEEDS/PROBLEMS/COMMENTS:**
			ALMA CORONADO, non-relative, is Petitioner.	1. Need Notice of Hearing.
Cont. from			Father: **ROSALIO SANDOVAL, JR.** – Court dispensed with notice per minute order dated 5/28/14.	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. Roxanne Vindiola (mother)
	Aff.Sub.Wit.		Mother: **ROXANNE VINDIOLA**	
✓	**Verified**		Paternal grandfather: Rosalio Sandoval – Declaration of Due Diligence filed on 5/28/14. Paternal grandmother: Unknown – Declaration of Due Diligence filed on 5/28/14.	3. Need proof of service of the Notice of Hearing along with a copy of the Petition or Consent and Waiver of Notice on: a. Rosalio Sandoval (paternal grandfather) b. Unknown paternal grandmother c. Roy Vindiola (maternal grandfather) d. Sylvia Guzman (maternal grandmother) - Unless the court dispenses with notice.
	Inventory		Maternal grandfather: Roy Vindiola – Declaration of Due Diligence filed on 5/28/14. Maternal grandmother: Sylvia Guzman – Declaration of Due Diligence filed on 5/28/14.	
	PTC		**Petitioner states** mother is currently incarcerated. Father is homeless. Mother has been threatening to pick up the minor once she is released from jail. Guardianship is necessary to protect the minor.	
	Not.Cred.		**DSS Social Worker Alma Ramirez's Report filed on 7/8/14**	
	Notice of Hrg	X		
	Aff.Mail	X		
	Aff.Pub.			
	Sp.Ntc.			
	Pers.Serv.	X		
✓	**Conf. Screen**			
✓	**Letters**			
✓	**Duties/Supp**			
	Objections			
	Video Receipt			
✓	**DSS Report**			
	9202			
✓	**Order**			
	Aff. Posting			**Reviewed by: KT**
	Status Rpt			**Reviewed on: 7/14/14**
✓	**UCCJEA**			**Updates:**
	Citation			**Recommendation:**
	FTB Notice			**File 16 - Vindiola**

Dept. 303, 9:00 a.m. Wednesday, July 16, 2014

17 Basam Fahd Geham (GUARD/P) **Case No. 14CEPR00441**

Atty Toufic, Shouman Ghazi (Pro Per – Paternal Great Uncle – Petitioner)

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

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

TEMP EXPIRES 7-16-14

SHOUMAN GHAZI TOUFIC, paternal great-uncle, is Petitioner.

Father: **FAHD GEHAM**
- Consents and waives notice

Mother: **SHADIHA AHMED**

Paternal grandparents: NOT LISTED
Maternal grandparents: NOT LISTED

Siblings: NOT LISTED

Petitioner states the father is a busy man and needs someone who can take Basam to his doctor's appointments and Petitioner is available. The father has an emergency to leave the country and Petitioner is happy to help out.

Court Investigator Jennifer Young filed a report on 7-10-14.

NEEDS/PROBLEMS/ COMMENTS:

1. **Need Notice of Hearing.**
2. **Need proof of personal service of Notice of Hearing with a copy of the petition at least 15 days prior to the hearing per Probate Code §1511 or consent and waiver of notice on:**
   - Shadiha Ahmed (Mother)
3. **Need proof of service of Notice of Hearing with a copy of the petition at least 15 days prior to the hearing per Probate Code §1511 or consent and waiver of notice or declaration of due diligence on:**
   - Paternal Grandfather
   - Paternal Grandmother
   - Maternal Grandfather
   - Maternal Grandmother
   - All siblings age 12 and older

Reviewed by: skc
Reviewed on: 7-15-14
Updates:
Recommendation:
File 17 - Geham

Dept. 303, 9:00 a.m. Wednesday, July 16, 2014

18 Esther Toscano (CONS/PE) Case No. 14CEPR00575

Atty **Kruthers, Heather H., of County Counsel's Office (for Petitioner Public Guardian)**
Atty **LeVan, Nancy J., sole practitioner (Court-appointed for Conservatee)**

Petition for Appointment of Temporary Conservator of the Person and Estate

Age: 71 years		
Cont. from		
	Aff.Sub.Wit.	
✓	**Verified**	
	Inventory	
	PTC	
	Not.Cred.	
✓	**Notice of Hrg**	
✓	**Aff.Mail**	
	Aff.Pub.	
	Sp.Ntc.	
✓	**Pers.Serv.**	
	Conf. Screen	
	Letters	X
	Duties/Supp	
	Objections	
	Video Receipt	
✓	**CI Report**	
✓	**PG Report**	
	Order	X
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	

TEMPORARY GRANTED EX PARTE EXPIRES 7/16/2014

GENERAL HEARING SET FOR 8/18/2014

PUBLIC GUARDIAN is Petitioner and requests appointment as Conservator of the Person and Estate without bond, with authority to change the residence of the proposed Conservatee to a skilled nursing facility.

Estimated Value of the Estate:

Personal property	-	**$40,000.00**
Annual income	-	**$ 600.00**
Total	**-**	**$40,600.00**

Petitioner states the proposed Conservatee is currently hospitalized at Community Regional Medical Center and suffers from diabetes, hypertension and other medical conditions, and uses the assistance of a wheelchair due to hip and leg pain; in addition she has a history of depression and suffers from dementia. Petitioner states she has been married to **ROSENDO TOSCANO** since 1962, they have 7 children, and there is a long history of domestic abuse between the proposed Conservatee and her husband, as well as financial abuse from some of their children. Petitioner states the family is well-known by several agencies including Adult Protective Services (APS) and the Police Department, the latter agency having received 39 calls in 12 months for physical abuse, financial abuse, warrants and various criminal activity. Petitioner states the APS referral indicates the proposed Conservatee was admitted to Community Regional Medical Center 10 times from January to June 2013 due to being a dependent adult unable to provide care for herself, she has been discharged 7 times to skilled nursing facilities and each time has returned home, and that her home is filthy and cockroach infested. Petitioner states the proposed Conservatee's Social Security benefits are allegedly taken by certain of her sons, rather than used for her needs.

Court Investigator Dina Calivillo's *Report* was filed on 7/10/2014.

NEEDS/PROBLEMS/ COMMENTS:

Court Investigator Advised Rights on 7/7/2014.

1. Need proposed order and letters of temporary conservatorship *(those previously submitted were used for ex parte.)*

Reviewed by: LEG
Reviewed on: 7/15/14
Updates:
Recommendation:
File 18 - Toscano

1 **Cylis Joe Gilbert (GUARD/P)** **Case No. 08CEPR01213**

Atty **Wasson, James E. (for Seth T. Bird– Petitioner – Father)**
Atty **Gilbert, Cherisse (Pro Per- Petitioner – Mother)**
Atty **Kezirian, Teri Ann (for Victoria Van Linge-Schuh – Objector – Guardian)**

Petition for Termination of Guardianship

Cont. from 101513, 111313		
	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	

SETH BIRD, father, and **CHERISSE GILBERT,** mother, are petitioners.

VICTORIA VAN LINGE-SCHUH, maternal grandmother was appointed guardian on 9/1/09, personally served on 10/01/2013. Objection filed 10/11/2013.

Paternal grandfather: Kenneth Bird

Paternal grandmother: Kimberly Bird, served by mail on 09/30/2013

Maternal grandfather: Keith Gilbert

Petitioner states: the child is rotated on a weekly basis between the guardian, Victoria Van-Linge Schuh and the paternal grandmother, Kimberly Bird. While the child is with the paternal grandmother, Kimberly, the father and the child's mother have been caring for him. The paternal grandmother has been cooperative in the transition aspect for the child reuniting with the parents. The guardian has not been very cooperative with allowing the father visitation. Both the mother and father believe that the more time spent solely with guardian the more unnecessary pain and stress is caused to the minor child. Petitioners have taken drastic measures to ensure that their lives have made all the positive and necessary changes that need to be made to correct the wrong that resulted in the need for the guardianship in the first place. Petitioners have overcome substance abuse issues and the father has maintained full time employment, steady residence and continued to pay child support to the guardian in order to show the court that he is willing and able to provide for his son. The father states that the ultimate driving force has and always will be to get his son back living with himself and the child's mother.

Please see additional page

NEEDS/PROBLEMS/COMMENTS:

Matter to be heard at 1:30pm.

Minute Order of 10/15/2013: Order Appointing Court Approved Reporter as Official Reporter Pro Tempore is signed by the Court. Mr. Wasson is appearing specially for Cherisse Gilbert and Kimberly Bird. Parties agree to participate in mediation today at 2pm. The Court directs counsel to meet and confer after mediation to sort out any issues. Matter is continued to 11/13/2013. Parties are advised that anything they wish to have considered by the Court should be provided to the Court Investigator. The Court Investigator is ordered to contact the therapist. Parties waive confidentiality so the Court Investigator can speak with the therapist. Visitation to remain as previously set.

1. Need proof of service at least 15 days before the hearing of Notice of Hearing with a copy of the Petition for Termination of Guardianship on the following:
   - Kenneth Bird (Paternal Grandfather)
   - Keith Gilbert (Maternal Grandfather)

Reviewed by: LV
Reviewed on: 07/11/2014
Updates:
Recommendation:
File 1 - Gilbert

Continued from previous page:
Petitioners believe that if the guardian had the power or ability to keep their son away from them she would. The father states that the guardian demands that the child call her mommy and the child becomes fearful if he accidently calls the guardian something other than mommy. When the child refers to his father as "daddy" the guardian tells the child that is a bad word and to call his father by name, Seth. The father states the guardian makes slanderous, inaccurate and inappropriate statements about him to the child.

The father states that he continues to be involved with the child's extra-curricular activities and has provided the child with a permanent room in his home for the child's visits. He also states that it is his goal to regain full physical and legal custody of the minor child, Cylis, before he misses out on another year of school, and things a parent should never miss out on.

Declaration filed by Cherisse Gilbert, mother, on 08/15/2013 which states that the only time she is able to see or care for her son is when the child is visiting his paternal grandmother during her court ordered visitation. The mother states that it is during this time that she is able to get the child ready for school, do homework, spend quality time and keep him on a regular schedule. She states that she has tried working with the guardian/maternal grandmother on allowing her more visits but the guardian is unwilling. The mother is concerned that the guardian is having the child call her mom which is causing the child great confusion. The mother states that she has taken steps to become a better mother. On June 11, 2011 she enrolled in a six month inpatient and six month outpatient program at Spirit of Women, in Fresno. While there she overcame her addiction and also completed classes which included Anger Management, Interpersonal Relationship/Codependency, Domestic Violence, Parenting Class, Relapse Prevention, Personal Development, Substance Abuse Education, Support Groups, Twelve Step Education, group and individual therapy. On 06/22/2012 the mother graduated from Spirit of Women and since completing the program she has gone back to school to get her GED, as well as obtained a job at Grilled Chz, as of 11/2012.

The mother states that both her and the father have worked hard to get where they are today and continue to work together to create a positive environment for the well-being of their son, Cylis.

Attached to the declaration are several certificates of completion.

Declaration filed 09/09/2013 by father, Seth Bird which include email exchanges with the guardian pertaining to visitation with the father and the child.

Court Investigator Julie Negrete's report filed 10/08/2013.

Declaration of the Guardian, Victoria Van Linge-Schuh, in Support of Objection to Termination of the Guardianship filed on 10/11/2013 states that she and her husband are the only stable and loving care providers that the minor has ever known. The father was released from jail and returned to Fresno in 2010, he has made repeated efforts to terminate the guardianship to the detriment of Cylis' emotional and physical well-being. The parents, have levied countless unfounded allegations against the guardian, trying to portray her as abusive, manipulative, and a detriment to the child.

Please see additional page

Stability of the Parents: On 08/14/2013, the guardian requested that Seth, the father, drug test as allowed in the current order. A true and correct copy of the test is attached as Exhibit "A", the results were positive for marijuana and methadone. Clearly the father is not sober as he alleges. Further, Seth and Cherisse, children's mother and father, are stating they will be living together with Cylis, the minor. They are telling the child this; but Seth's social media cites continue to show his relationship is in tact with his girlfriend Kristen Brewer who in the previous investigation had a criminal record. Until Seth has completed a chemical dependency assessment, followed the recommendations of the drug counselor, and tests consistently negative, there will be no support for his statement that he is a stable parent for Cylis. The guardian states that the father has become increasingly hostile towards her in his communication with her. She states that 10/13/2013 at a scheduled doctor's appointment Seth accused her via text message that she had purposefully changed the child's doctor's appointment. The mother, Cherisse, approached the guardian and began yelling at the guardian, accusing her of changing the appointment. The guardian tried to walk away with the minor and avoid conflict, at one point the father yelled out to the child **"just two more weeks and then you won't ever have to see her again!"** Guardian states that the situation was embarrassing, frightening, and did not have to happen in front of the child. She states that the parents rarely attend appointments for the child **unless** there is a pending Court hearing. Guardian believes the parents to be emotionally unstable and a psychological evaluation should be completed prior to a termination of guardianship.

Medical Needs of the Ward: The guardian states that the minor child has only one kidney due to being born premature. He needs to be monitored constantly and is on medication to ensure he remains healthy. The parents only come to appointments when there is a pending court date. The minor has had 9 combined dentist, doctors, and orthodontia appointments over the course of the past six months and the paternal grandmother, Kim, has attended none of them, Seth (father), has attended two, and Cherisse (mother) has attended two. Each has had adequate notice of the appointments. Guardian does not believe that either parent is ready to maintain the child's medical schedule and regimen.

Educational Needs: The guardian does not believe that the child is getting help with his homework or encouraged to do his Accelerated Reader testing during the paternal grandmother's week with the child. The child's Accelerated Reading tests are not taken regularly while he is with the paternal grandmother. The minor's grades are suffering because of the inconsistency during the school week.

Please see additional page

Emotional Needs of the Ward: The minor has been in counseling with Frankie King, LCSW, it has been helpful with addressing the child's signs of aggression. The guardian states that the parents do not share her same concern about violent video games and weapons that are inappropriate for a child of Cylis' age. The guardian witness the child holding a BB pistol on 08/26/2013. The guardian states that she does not ask the child what he does when he is with his parents however the child and the guardian share a close bond and he has shared with the guardian that his father told him that if he didn't "pick" living with the father that he would never be able to see his sister. The guardian believes that the father is putting the child in a position of turmoil. The guardian believes that the child should be out of this conflict, and the parents do not appear to understand or value the role that the guardian has with the child and how harmful it is to the child to feel like he cannot love the guardian.

Petitioner requests that t the investigator and or psychologist speak with Frankie King, LCSW, to determine what she believes is best for the child emotionally, prior to there being any decision regarding this petition. Petitioner requests the court order additional evaluations and services prior to terminating the guardianship.

Guardian's Objection to Termination of the Guardianship filed by Attorney Teri Ann Kezirian on 10/11/2013 states the guardian objects to the termination of the guardianship of the person of Cylis Joe Gilbert sought by Seth Bird, biological father and Cherisse Gilbert, biological mother of the child, as no legal or factual grounds exist justifying such termination, and the ward's best interests will not be met by such an order.

This objection is based on the pleadings on file, the credible admissible evidence before the Court, the declaration of the guardian submitted herewith, and any other relevant information which may be later discovered and admitted to trial.

Further, the guardian requests the Court order a chemical dependency assessment of the biological father and mother prior to considering the termination of the guardianship with a court approved provider, at the expense of the respective parents, and that the court order a psychological evaluation/bonding study to assess the ward's attachment to the guardian, and the biological parent's psychological stability at the expense of the petitioning parents.

Court Investigator Jennifer Daniel filed a Supplemental Report on 11/07/13.

Declaration of Cherisse Gilbert, filed 11/08/13 attaches letters from her employer and church attesting to her stability, etc.

Please see additional page

Declaration of Kimberly Bird filed 11/12/2013 states that at the 10/15/2013 hearing the guardian stated through her attorney and on her declaration that one of her biggest concerns was that the minor was failing in school and that he was getting behind in his homework while under the care of his father. Immediately following the hearing Ms. Bird and the mother, Cherisse Gilbert, drove to the school to find out that the child is a B+ student overall, attached are school records. Cylis' teachers state that he is a very stable well balanced and happy child.

Ms. Bird states that she has had no knowledge of the minor seeing his current therapist, she never received notice which is a violation of orders. Ms. Bird is concerned with the fact that the guardian is participating in the child's therapy sessions when the parents have not been given that same opportunity. This therapist has not had any discussions with the parents or the paternal grandmother, Kimberly Bird. Ms. Bird request the Court grant permission for a new therapist.

Ms. Bird states that mediation was a complete waste of time and money. The first three hours the guardian went on about the past and how she could not come up with one single solution. Ms. Bird states the guardian is uncooperative, she lies in court and will do and say whatever for the court to delay in making a decision to help reunite Cylis with his parents.

It is getting harder every time the child goes back to his grandmother/guardian's home as he wants to stay with his parents but is worried that he will upset his grandmother/guardian.

Ms. Bird asks that the Court consider terminating the guardianship today not go through another tedious process of visitation since the parents are seeing and actively involved with their son on a regular half time basis. If termination is not granted the Court will see yet another stream of documentation from the past that the guardian will continually try to stir up to get the court to delay the process as long as feasibly possible.

Stipulation and Order Theron filed 03/17/2014 the guardianship of Cylis shall continue in full force and effect with the guardian, Victoria Van Linge-Schuh, remaining the guardian. The visitation order as set forth in the Order After Hearing of 11/29/2012, attached hereto as Exhibit A, shall remain in effect subject to the following modifications:

a) Paragraph 2.01: The reference to the claimant shall be removed, and replaced with the biological mother and father.
b) Paragraph 2.02: The following shall be added: The child shall remain at Woods Elementary School, if allowed by school officials, for the remainder of the 2013-2014 academic school year. The biological parents and the guardian shall meet with the child's teacher to discuss and understand the academic requirements of the child and to ensure that all communication is shared promptly and with the biological parents and the guardian. The paternal grandmother, Kimberly Bird, shall remain on the school pick up list.
c) Paragraph 2.03: The following shall be added: Communication regarding the child shall be via e-mail and telephone contact between the guardian and the biological parents.
d) Paragraph 2.06: The reference to the claimant shall be removed.
e) Paragraph 3.01: The reference to the claimant shall be removed, and replaced with the biological parents. On the weeks that the child is with the biological parents the child shall reside with the parents only at their apartment. The biological parents shall provide the guardian with their address and prof of residence at the apartment. The claimant, Kim Bird, shall be allowed two overnight visits (Friday and Saturday) a month during the parents visitation time, and the guardian shall be provided 48 hours notice of their visit.
f) Paragraph 3.02: this paragraph shall be deleted.

Please see additional page

g) Section 4.0: all references to the claimant shall be removed and replaced with the biological parents.

h) Paragraph 5.10: A paragraph 5.10 shall be added to include as follows: The biological father shall provide the information to his drug treatment program and counselor, name, address, and telephone number, to the guardians' attorney. The biological father shall sign a waiver allowing the guardian and the guardian's attorney to have direct contact with the biological father's provider to discuss the father's program, compliance with the program, recommendations from the program, and procedures of the program. The biological father shall provide to the guardian and/or to guardian's counsel copies of all of his drug testing required under the program.

i) Paragraph 5.11: shall be added to include as follows: The counsel for the biological mother shall provide the minute order showing proof of dismissal of the probation violation against the mother associated with the mother's arrest of 12/09/2013.

The petition to terminate the guardianship is set for review hearing on 06/17/2014 at 10:30am in dept. 303. There shall be an updated investigation and report filed prior to this date.

Court Investigator Julie Negrete's Supplemental Report filed 07/14/2014.