

Ex parte Petition for Visitation

Timothy, 6	MIKHAIL RYBIN, father, is Petitioner.		<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>CONTINUED FROM 05/06/13</u> Minute Order from 05/06/13 states: With respect to visitation during the summer vacation, the Court orders that the father have one week per month as set forth by Mr. Thompson. The Court further orders that pick-up and delivery of the children take place in Modesto. Counsel is directed to prepare the order.</p> <p>As of 08/13/13, nothing further has been filed other than the Order regarding visitation.</p> <p>The following note pertains to the original Petition for Visitation:</p> <ol style="list-style-type: none"> Need Notice of Hearing.
Sophia, 5	GENNADIY KITSEN and LIDIA KITSEN, maternal uncle and aunt, were appointed temporary guardians on 12/12/12.		
Cont. from 050613	Mother: MARIAM RYBIN		
Aff.Sub.Wit.			
✓ Verified	Paternal grandfather: YURI RYBIN Paternal grandmother: OLGA RYBIN		
Inventory			
PTC	Maternal grandfather: NICKOLAY KOTENKOFF Maternal grandmother: VALENTINA KOTENKOFF		
Not.Cred.			
Notice of Hrg	x		
✓ 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			

Continued on Page 2

Declaration of Nikole E. Cunningham in support of Opposition to Ex Parte Petition for Visitation filed 05/02/13 states:

1. At the status conference hearing on 04/11/13, the Court extended the temporary guardianship to 10/10/13 and requested that the parties reach an agreement regarding visitation. In regards to visitation, Mr. Rybin requested that the Court order Petitioners to drive to Modesto for each visit in order to exchange the children. Petitioners noted the burden associated with traveling to Modesto for each visit and requested that the Court not issue such an Order. Petitioners did agree and remain willing to travel to Modesto for a portion of the visits between Mr. Rybin and his children. The Court requested that the parties agree to exchange the children in Modesto for a portion of the visits.
2. On 04/15/13, counsel and her clients prepared a proposed visitation schedule and submitted it to Mr. Rybin. The proposed visitation schedule greatly expanded the prior custody orders issued by Yolo County Superior Court. The proposed visitation schedule allows Mr. Rybin to have 1 six hour visitation and 1 weekend visitation per month during the school year. When the children are on summer vacation, the schedule allows Mr. Rybin to have 1 week-long visit from Saturday to Saturday, per month. The guardians are willing to travel to Modesto for a significant number of visits.
3. On 04/17/13, Mr. Rybin sent counsel an e-mail that included a copy of the minute order from the Court's online docket. Mr. Rybin highlighted portions of the minute order where the Court directed the parties to work amongst themselves to determine the days when they would meet halfway to exchange the children for visitation. Mr. Rybin then sought to have a weekend visit the 1st and 3rd weekends of each month and demanded that the guardians drive to Modesto to exchange the children for each visitation. During summer vacation, Mr. Rybin also proposed that week-long trips be extended to run through Monday and also demanded that guardians drive to Modesto for exchanges for each week-long visit.
4. Also on 04/17/13, counsel responded to Mr. Rybin regarding his visitation demands. She pointed out that the Court only asked that guardians travel to Modesto for a portion of the visitations, not all visits. It was further pointed out that due to the guardian's work schedules, they were unable to travel to Modesto for each visit. Finally, given that the guardians are paying all expenses associated with raising the children, to further burden guardians with the expense and time associated with always exchanging the children in Modesto was neither fair nor reasonable. Counsel did offer Mr. Rybin an additional visit the weekend of 04/26 – 04/28 and requested that Mr. Rybin let her know if he agreed to the visitation schedule. Mr. Rybin never responded to the e-mail and instead filed this ex parte petition.

Memorandum of Points and Authorities in Opposition to Ex Parte Petition for Visitation filed 05/02/13.

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

DOD: 03/28/2013	HUGO RICHARD NOROYAN , father is petitioner and requests appointment as Administrator with bond set a \$1,000,000.00.	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Note: Page 2B is the competing petition filed by the decedent's mother, Patricia L. English.</p> <p>Minute order of 07/23/2013: The Court directs the parties to submit their briefs addressing the issue of why a father or mother would have preference by 08/12/2013. Said briefs are to include any controlling law.</p> <p>The following issues remain:</p> <ol style="list-style-type: none"> 1. Need Confidential Supplemental to Duties & Liabilities of Personal Representative. 2. #5a(3) or #5a(4) was not answered regarding a registered domestic partner. 3. #5a(5) or #5a(6) was not answered regarding children. 4. #5a(7) or #5a(8) was not answered regarding issue of predeceased child. 5. Need Letters.
	Full IAEA – o.k.	
Cont. from 072313	Decedent died intestate.	
<input type="checkbox"/> Aff.Sub.Wit.	Residence: Fresno	
<input checked="" type="checkbox"/> Verified	Publication: The Business Journal	
<input type="checkbox"/> Inventory	Estimated value of the Estate:	
<input type="checkbox"/> PTC	Personal property \$1,000,000.00	
<input type="checkbox"/> Not.Cred.	Probate Referee: Steven Diebert	
<input checked="" type="checkbox"/> Notice of Hrg	Declaration in Support of Petitioner Patricia L. English Objection to Appointment of Hugo Richard Noroyan as Personal Representative filed 07/16/2013 states that objector believes that Hugo Richard Noroyan is unfit and unable to act competently and properly as the Personal Representative of the Estate as more particularly described herein below.	
<input checked="" type="checkbox"/> Aff.Mail	Hugo Richard Noroyan has been addicted to alcohol for his entire life. He is known to spend his money on gambling and on alcohol. In the past, he was severely addicted to Cocaine to the point that he had to wear a towel around his neck because of drainage from his nose due to his Cocaine addiction. Late last year, objector went to Santa Cruz to visit the petitioner, Hugo, and he got so drunk that he fell and severely injured his nose and had a concussion. Simply put, it is because of such problems, he is unable and unfit to be appointed representative of this estate.	
<input checked="" type="checkbox"/> Aff.Pub.		
<input type="checkbox"/> Sp.Ntc.		
<input type="checkbox"/> Pers.Serv.		
<input type="checkbox"/> Conf. Screen		
<input type="checkbox"/> Letters	x	
<input checked="" type="checkbox"/> Duties/Supp		
<input type="checkbox"/> Objections		
<input type="checkbox"/> Video Receipt		
<input type="checkbox"/> CI Report		
<input type="checkbox"/> 9202		
<input checked="" type="checkbox"/> Order		
<input type="checkbox"/> Aff. Posting		
<input type="checkbox"/> Status Rpt		
<input type="checkbox"/> UCCJEA		
<input type="checkbox"/> Citation		
<input type="checkbox"/> FTB Notice		
Please see additional page		<p>Reviewed by: LV</p> <p>Reviewed on: 08/13/2013</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 2A – Noroyan</p>

Objection continued: Mr. Hugo Noroyan has never taken care of his son, Richard Michael Noroyan, the decedent. When Richard Noroyan was born and throughout decedent's entire life, Hugo Noroyan never paid for any of the bills, birth costs, health care, child support, clothing and shelter or provided any financial assistance nor has he ever had any kind of relationship with his son. Objector states that she had to obtain welfare assistance to support her son and herself for a few years. When she obtained welfare assistance, Hugo Noroyan, denied he was the father of the decedent.

Objector states that she has provided food, clothing, shelter, and have taken care of her son his whole life without any assistance from the father.

Objector has had experience taking care of her mother's estate as when she was elderly and unable to care for herself, she was given Power of Attorney by her mother to take care of her business and estate. Further, objector was named Trustee of her mother's Trust upon her death. Objector understands the Fiduciary duty of care regarding the handling of an estate.

Memorandum of Authorities in Support of Objection filed 08/05/2013 states on 07/16/2013, Patricia L. English, filed her written objection to the appointment of Mr. Hugo Richard Noroyan, as personal representative of the Estate. On 07/16/2013, Patricia L. English, filed her competing petition to be named as the Personal Representative of the Estate. The Probate Code states that "any interested person" may contest the appointment on the basis of the lack of competency due to the unfitness of the proposed representative to act. Probate Codes Sections 1043, 8004 and 8402(a)(2). "Any interested person" is defined by the Probate Code Section 8000 includes a parent or a "beneficiary" of the estate. Ms. English is an heir, a mother and a beneficiary to the estate since there is no Will. Ms. English has set forth major factual concerns in regards to Mr. Hugo Noroyan's competence to act as representative, as more specifically set forth in her written objection filed on 07/16/2013. This objection was not filed with all issues regarding his unfitness to act. There is concern Mr. Noroyan will not be able to effectively execute the duties of the office, Administrator of the Estate. Further, the objection is based upon the most recent declaration filed.

Further, Ms. English has much more knowledge of the decedent's assets, bills, information and has acted as a Trustee for the decedent for over thirty years. She has assisted the decedent in paying his bills, obtaining disability benefits, providing transportation, providing any support and income, and insure he had proper medical care. Mr. Noroyan has never taken any responsibility for the care of his disabled son as he was concerned with his own personal desires. In short, he is unfit to act due to his past conduct.

Ms. English has asserted her right to be appointed as personal representative and also filed a competitive petition for probate to be appointed administrator as soon a she was able.

The objection is not exhaustive of Ms. English's factual objections to Appointment of Mr. Noroyan and she reserves the right to set forth further basis as she discovers them. Mr. English has the capacity, ability and experience to execute the duties of the office.

Please see additional page

Declaration of Hugo Richard Noroyan in Reply to Objection to Appointment of Hugo Richard Noroyan as Representative filed on 08/12/2013 states medical records will reveal that Mr. Noroyan is taking medication which is commonly prescribed. Said records will be made available to the court in camera if necessary. He acknowledges the past use of alcohol and drugs many years ago and has been clean and sober for a long time. He has owned a successful restaurant in Santa Cruz from 1971 to 1986 which employed three employees. He has also managed an ocean front hotel in Santa Cruz from 1997 to 2011 and has owned a 7/11 franchise in Santa Cruz County from 1969 to 1971.

Patricia L. English never asked Mr. Noroyan for child support payments as she was and still is very wealthy making her ineligible for welfare. If she ever received "welfare payments" they would have been obtained fraudulently. Furthermore, the Fresno County Child Support Unit of the District Attorney's office never contacted Mr. Noroyan for reimbursement, nor did the Fresno County Welfare Department.

Over the years Mr. Noroyan states he was accumulated considerable management skills consistent with the management of an estate. Patricia primarily worked in the gambling business, including the cggg at the 500 Club in Clovis.

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

- **Friday, 09/20/2013 at 9:00a.m. in Dept. 303** for the filing of the Bond **and**
- **Friday, 01/17/2014 at 9:00a.m. in Dept. 303** for the filing of the inventory and appraisal **and**
- **Friday, 10/17/2014 at 9:00a.m. in Dept. 303** for the filing of the first account and final distribution.

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.

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

Age: 03/28/2013	PATRICIA L. ENGLISH, mother is petitioner and requests appointment as Administrator with bond set a \$975,000.00.		<p>NEEDS/PROBLEMS/COMMENTS:</p> <ol style="list-style-type: none"> 1. Need Affidavit of Publication. 2. Need Letters. 3. Need Order. <p>Note: If the petition is granted status hearings will be set as follows:</p> <ul style="list-style-type: none"> • Friday, 09/20/2013 at 9:00a.m. in Dept. 303 for the filing of the Bond <u>and</u> • Friday, 01/17/2014 at 9:00a.m. in Dept. 303 for the filing of the inventory and appraisal <u>and</u> • Friday, 10/17/2014 at 9:00a.m. in Dept. 303 for the filing of the first account and final distribution. <p>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.</p> <p>Reviewed by: LV</p> <p>Reviewed on: 08/13/2013</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 2B – Noroyan</p>
	Full IAEA – ?		
Cont. from	Decedent died intestate.		
<input type="checkbox"/> Aff.Sub.Wit.	Residence: Fresno		
<input checked="" type="checkbox"/> Verified	Publication: Need		
<input type="checkbox"/> Inventory	Estimated value of the Estate:		
<input type="checkbox"/> PTC	Personal property \$975,000.00		
<input type="checkbox"/> Not.Cred.	Probate Referee: Steven Diebert		
<input checked="" type="checkbox"/> Notice of Hrg	Declaration of Hugo Richard Noroyan in Support of Contest of Appointment of Patricia L. English as Personal Representative filed 08/12/2013 states he has known the petitioner Patricia L. English since approximately the late 1960s and is familiar with her chosen lifestyle.		
<input checked="" type="checkbox"/> Aff.Mail	w/	Throughout the time objector has known Patricia she has invited unsavory people to camp out at her residence. Many of them have or had gambling and/or alcohol and drug problems. Richard lived in a bad situation but was dependent upon his mother's money. Objector has witnessed Patricia in the past gambling, ingesting cocaine and consuming excessive alcohol. Objector states he does not gamble and has rarely gambled in the past.	
<input type="checkbox"/> Aff.Pub.	x		
<input type="checkbox"/> Sp.Ntc.			
<input type="checkbox"/> Pers.Serv.			
<input type="checkbox"/> Conf. Screen			
<input type="checkbox"/> Letters	x		
<input checked="" type="checkbox"/> Duties/Supp			
<input type="checkbox"/> Objections			
<input type="checkbox"/> Video Receipt			
<input type="checkbox"/> CI Report			
<input type="checkbox"/> 9202			
<input type="checkbox"/> Order	x		
<input type="checkbox"/> Aff. Posting			
<input type="checkbox"/> Status Rpt			
<input type="checkbox"/> UCCJEA			
<input type="checkbox"/> Citation			
<input type="checkbox"/> FTB Notice			

Please see additional page

Objection continued: Since Richard was in and out of jail because of his prolonged drug use and he lived with Patricia when he was out of jail, it is unlikely that she took very good care of him. If she was insuring he had "proper medical care" she would never have allowed Richard to indulge in cocaine at her residence, especially knowing he had a pacemaker which needed to be replaced. Objector spoke to petitioner about this but she did not do anything about it. In fact Patricia's family did not acknowledge Richard's existence for seven years.

Patricia would not share any information with the objector about Richard's estate after he died and her discussions with the tribe about the disposition of his winnings. She was evasive about any checks she may have received from the tribe after his death.

Patricia states in her declaration that she came to visit objector in Santa Cruz last year and he got so drunk and fell and severely injured his nose and had a concussion. This is not true. Objector states he fell off his bicycle when the spoke caught in the gap between wooden planks at the Santa Cruz Wharf. Objector states his daughter who was present can attest to his sobriety at that time.

Objector states Patricia, the petitioner, visited him in Santa Cruz shortly after his wife of twenty five years suddenly died. She once again attempted to establish a relationship with him and was upset when he rejected her advances. He states if he was so befuddled because of drug and alcohol abuse it certainly did not stop her from wanting to hook up with him.

Objector states he retained a capable attorney who has practiced in the area of probate law for over twenty years. She is well experienced to assist him in following the legal procedures necessary to administer the estate.

Contest of Appointment of Personal Representative (Probate Code §§ 1043, 8004(a), 8402); Memorandum of Points and Authorities and Declarations thereon filed 08/12/2013 states Hugo opposes the appointment of Patricia L. English as administrator of the Estate of Richard Michael Noroyan on the following grounds:

- Patricia is not competent to serve as personal representative because she would be subject to immediate removal pursuant to Probate Code § 8502(a) & (d) on the following grounds:
 1. She has asserted a claim as the outright owner of property to which the probate estate has a meritorious competing claim of ownership which presents an actual and serious conflict of interest.
 - a. According to William Knapp, Patricia with his assistance, submitted under penalty of perjury a declaration to a Laurie McCloud, purported tribal attorney for Chuckchansi Gold Resort and Casino in Madera County, declaring that no other person has a right to the interest of the decedent's property as described in the declaration for the purpose of collecting property belongings to the Richard's estate, winnings from the Casino. In fact Hugo is statutorily entitled to one half of any property belonging to the decedent under Probate Code § 6402(b).
 2. Patricia may have committed a fraud of the estate by misrepresenting to the Casino her entitlement to all of the decedent's uncollected winnings from the Casino.
 - a. An affidavit for Collection or Transfer of Personal Property under Probate Code § 13100 et seq. must state, inter alia, the name of the successor of the decedent to the described property (Probate Code § 13101(8)(A)) and no other person has a superior right the interest of the decedent in the described property (Probate Code § 13101(9)). Hugo is statutorily entitled to one half of any property belonging to the decedent.

Please see additional page

2B (additional page) Richard Michael Noroyan (Estate) Case No.13CEPR00542

Hugo is equally entitled to appointment as administrator of his son's estate and to letters of administration. Hugo has filed his petition for appointment and has served notice of hearing on the petition in the manner provided in Probate Code §§ 8110-8113. For the reasons stated above Patricia is incompetent to assume duties of administrator of Richard's estate and her petition should be denied.

Wherefore, Contestant prays that the Court:

- Deny Patricia L. English's petition for Appointment as administrator of the Estate of Richard Michael Noroyan and for issuance of letters of administration.
- Award contestant his costs in this proceeding.

Memorandum of Points and Authorities attached.

Declaration of Claudia Y. Shafer in Support of Contest to Appointment of Personal Representative on 07/25/2013 a phone call was received from William Knapp. Mr. Knapp advised Attorney Shafer that he was a friend of the decedent and is a friend of Patricia L. English, petitioner. He said he called Attorney Shafer to "clear things up" because he didn't think she understood the "real situation" surrounding Richard's lottery winnings at Chuckchanzie [sic] Resort and Casino. Mr. Knapp informed Ms. Shafer that he is some sort of "consultant" to the Chuckchanzie [sic] Indian tribe and knows many important members of the tribe. He said he was with Richard the night he won the million dollar "lottery" at Chuckchanzie [sic] and Richard signed some sort of annuity contract with the casino that night. He stated that five (5) monthly checks had been sent out to Patricia's address and two (2) had been frozen by the tribe. He told Ms. Shafer that he assisted Patricia in filling out a document which was delivered to tribal attorney Laurie McCloud in order for her to collect Richard's winnings. He informed Ms. Shafer that he had in his possession a letter from tribal attorney Laurie McCloud in Phoenix Arizona stating the tribe had graciously agreed to extend Richard's winnings to Patricia. He further stated Hugo had made no claim to the money.

Mr. Knapp informed Ms. Shafer that he was in court with Patricia and her attorney, William Fearnside, on 07/23/2013 in Fresno Superior Court. During the court call on that date in which Ms. Shafer made an appearance for Hugo, Mr. Fearnside represented to the court that three annuity payments had been made. This contradicts the statement by Mr. Knapp that four payments had been made and two frozen by the tribe.

Ms. Shafer states that she has browsed the California State Bar website to find a Laurie McCloud, as well as the Arizona state bar website to locate her. No attorney has been found by that name or variations thereof at either website.

	DAVID C. DUNGY , Trustee, is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
	Account period: 1-1-07 through 11-1-12	
	Accounting: \$ 225,375.69	
	Beginning POH: \$ 0.00	
	Ending POH: \$ 0.00	
<input type="checkbox"/>	Aff.Sub.Wit.	
<input checked="" type="checkbox"/>	Verified	
<input type="checkbox"/>	Inventory	
<input type="checkbox"/>	PTC	
<input type="checkbox"/>	Not.Cred.	
<input checked="" type="checkbox"/>	Notice of Hrg	
<input checked="" type="checkbox"/>	Aff.Mail w	
<input type="checkbox"/>	Aff.Pub.	
<input type="checkbox"/>	Sp.Ntc.	
<input type="checkbox"/>	Pers.Serv.	
<input type="checkbox"/>	Conf. Screen	
<input type="checkbox"/>	Letters	
<input type="checkbox"/>	Duties/Supp	
<input type="checkbox"/>	Objections	
<input type="checkbox"/>	Video Receipt	
<input type="checkbox"/>	CI Report	
<input type="checkbox"/>	9202	
<input checked="" type="checkbox"/>	Order	
<input type="checkbox"/>	Aff. Posting	
<input type="checkbox"/>	Status Rpt	
<input type="checkbox"/>	UCCJEA	
<input type="checkbox"/>	Citation	
<input type="checkbox"/>	FTB Notice	

Petitioner states the trustee has reimbursed himself out of pocket expenses but otherwise has not received or taken any compensation.

Petitioner requests that:

1. The account be settled, allowed, and approved, and all acts and transactions of Petitioner be ratified, confirmed, and approved;
2. The trust be terminated; and
3. Such other and further orders as the Court may deem proper under the circumstances.

Reviewed by: skc
Reviewed on: 8-13-13
Updates:
Recommendation:
File 3 – De Caro

4 Gene Ray Chance (Estate)

Case No. 13CEPR00612

Atty Standard, Donna M. (for Walter Sherwood Chance – Petitioner)

Petition for Probate of Will and for Letters Testamentary (Prob. C. 8002, 10450)

DOD: 10-16-11	WALTER SHERWOOD CHANCE , Brother, is Petitioner and requests appointment as Executor with Full IAEA without bond.	NEEDS/PROBLEMS/COMMENTS: <i>Note: Examiner notes that this is an unusual petition. The Court may require further clarification as to various parts of this request.</i> <i>Please see NEEDS/PROBLEMS/COMMENTS on additional pages.</i>
	Petitioner requests that the Court find that the Decedent died testate and that the "Private Covenant/Contract" dated 1-27-11 be admitted to probate as Decedent's will.	
<input type="checkbox"/> Aff.Sub.Wit.	X	
<input checked="" type="checkbox"/> Verified		
<input type="checkbox"/> Inventory		
<input type="checkbox"/> PTC		
<input type="checkbox"/> Not.Cred.		
<input checked="" type="checkbox"/> Notice of Hrg		
<input checked="" type="checkbox"/> Aff.Mail	W	
<input type="checkbox"/> Aff.Pub.	X	
<input type="checkbox"/> Sp.Ntc.		
<input type="checkbox"/> Pers.Serv.		
<input type="checkbox"/> Conf. Screen		
<input checked="" type="checkbox"/> Letters		
<input checked="" type="checkbox"/> Duties/Supp		
<input type="checkbox"/> Objections		
<input type="checkbox"/> Video Receipt		
<input type="checkbox"/> CI Report		
<input type="checkbox"/> 9202		
<input checked="" type="checkbox"/> Order		
<input type="checkbox"/> Aff. Posting		
<input type="checkbox"/> Status Rpt		
<input type="checkbox"/> UCCJEA		
<input type="checkbox"/> Citation		
<input type="checkbox"/> FTB Notice		
	Petitioner is a resident of Hornbeck, LA. All heirs waive bond. Full IAEA – <i>need publication</i> Residence: Hornbeck, Vernon Parish, Louisiana (but owned property in Squaw Valley, Fresno County, CA) Publication: <i>need publication</i> Petitioner states that while the document is not composed as a formal will, it does show the Decedent's testamentary intent for distribution and all testate heirs (which are Decedent's siblings) are in agreement with its proposed distribution, including the distribution to Church of Kaweah. Estimated Value of Estate: Real property: \$160,000.00 Probate Referee: Steven Diebert	
		Reviewed by: skc Reviewed on: 8-15-13 Updates: Recommendation: File 4 – Chance

Page 2

1. There is no document attached to the petition pursuant to Probate Code §8002(b). It appears that an original "Private Covenant/Contract" was deposited with this Court as a will on 7-12-13. Examiner has pulled that original document from deposit and placed it in this file for reference; however, because no copy was attached to the petition, need verification that this is, in fact, the document the petition refers to.
2. Petitioner requests that the Court find that the Decedent died testate, that the "Private Covenant/ Contract" be admitted to Probate as a will, and that Petitioner be appointed as Executor. The Court may require authority for such finding and admission of this document as a will.

Note: The document is not composed as a will; rather, it is a contract that specifically references this Fresno County property and contains a provision for performance in the event of his death by an agent. Probate Code §6110 requires a finding of clear and convincing evidence that the testator intended the document to constitute a will, and Probate Code §8220 requires a subscribing witness to attest to that fact as well. Note that the document is not "self-proving" as a will, and a proof of subscribing witness (DE-131) under §8220 would be required.

Note: Petitioner does not state whether this is an ancillary probate pursuant to Probate Code §12510, or whether any proceedings are commenced or anticipated to be commenced in Louisiana. Petitioner also does not state if there any other testamentary documents in existence, and if so, have they or will they be admitted to probate elsewhere, or is the decedent otherwise intestate?

Therefore, need authority for appointment as requested, or alternatives for proceeding.

3. The document names the decedent's brother Sherwood Chance as agent. Is Petitioner Walter Sherwood Chance the same as the Sherwood Chance named in the document?
4. Need dates of death of the decedent's deceased spouse and deceased sister pursuant to Local Rule 7.1.1.D.
5. #7b of the Petition is incomplete. Need further clarification regarding the deceased spouse.
6. Need proof of publication.
7. Petitioner requests appointment without bond, and all heirs waive bond; however, the court may require bond if the proposed personal representative resides outside California or for other good cause pursuant to California Rules of Court 7.201 (b) and Probate Code 8571.

Please note that further review may be necessary upon review of supplemental information provided in response to the above questions.

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

DOD: 06/11/2013		<p>CHARLES O. PHILLIPS, father/named executor without bond, is petitioner.</p> <p>Full IAEA – o.k.</p> <p>Will dated: 01/28/2000</p> <p>Residence: Fresno Publication: The Business Journal</p> <p>Estimated value of the Estate Personal property - \$51,500.00 Real property - \$90,585.00 Total: \$142,085.00</p> <p>Probate Referee: Rick Smith</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Note: If the petition is granted status hearings will be set as follows:</p> <ul style="list-style-type: none"> • Friday, 01/17/2014 at 9:00a.m. in Dept. 303 for the filing of the inventory and appraisal and • Friday, 10/17/2014 at 9:00a.m. in Dept. 303 for the filing of the first account and final distribution. <p>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.</p>
Cont. from			
<input type="checkbox"/>	Aff.Sub.Wit. s/p		
<input checked="" type="checkbox"/>	Verified		
<input type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC		
<input type="checkbox"/>	Not.Cred.		
<input checked="" type="checkbox"/>	Notice of Hrg		
<input checked="" type="checkbox"/>	Aff.Mail		
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<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.		
<input type="checkbox"/>	Conf. Screen		
<input checked="" type="checkbox"/>	Letters		
<input checked="" type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report		
<input type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		
Reviewed by: LV			
Reviewed on: 08/14/2013			
Updates:			
Recommendation: Submitted			
File 5 – Phillips			

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

DOD: 11/02/2009		PAIGE MCKERRAL-BURNETT , step granddaughter is petitioner and requests appointment as Administrator with Will annexed without bond. Full IAEA – o.k. Will dated: 07/16/1984 Residence: Fresno Publication: The Business Journal	NEEDS/PROBLEMS/COMMENTS: 1. The Petition states that Paige McKerral-Burnett is the personal representative for Parker James Gillespie, Jr., decedent's deceased son, however Court records do not show that a Petition has been filed in the estate of Parker James Gillespie, Jr. and that the petitioner has been Court appointed as the personal representative of his estate. Need proof that the petitioner has standing to file in this case. 2. Need Letters. Note: The Notice of Petition to Administer Estate form (DE-121) used is outdated. This form was updated January 1, 2013 and revised the language of #8 regarding Notice to Creditors. The updated language should also be used in the publication. Note: If the petition is granted status hearings will be set as follows: <ul style="list-style-type: none"> • Friday, 01/17/2014 at 9:00a.m. in Dept. 303 for the filing of the inventory and appraisal <u>and</u> • Friday, 10/17/2014 at 9:00a.m. in Dept. 303 for the filing of the first account and final distribution. 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.
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		Estimated value of the Estate: Real property \$200,000.00 Probate Referee: Rick Smith Petitioner states: decedent died testate leaving her entire estate to her husband, Parker James Gillespie, Sr.; if he survived her, and to her son, Parker James Gillespie, Jr.; in the event her husband did not survive her. Parker James Gillespie, Jr. became entitled to inherit decedent's entire estate. Because Parker James Gillespie, Jr. died on 08/12/2002 the personal representative of his estate is petitioning the court for this probate administration. There are no other surviving beneficiaries. Petitioner is also the step-granddaughter of decedent.	
		Reviewed by: Reviewed on: Updates: Recommendation: File 6 – Gillespie	

Atty Esraelian, Robyn L., of Richardson, Jones & Esraelian (for Petitioners Charles Chavoor, Jack Chavoor, and Shamera Chavoor)

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

DOD: 9/26/1997	<p>CHARLES CHAVOOR, JACK CHAVOOR, and SHAMERA CHAVOOR, children, are Petitioners.</p> <p>40 days since DOD.</p> <p>No other proceedings.</p> <p>I & A - \$13,333.00</p> <p>Decedent died intestate.</p> <p>Petitioners request Court determination that Decedent's 1/6th (16.67%) interest in real property located at 1134 E. Yale, Fresno, passes to the Petitioners (at 1/3 interest each) pursuant to intestate succession.</p>	NEEDS/PROBLEMS/COMMENTS:
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		Reviewed by: LEG
		Reviewed on: 8/13/13
		Updates:
		Recommendation: SUBMITTED
		File 7 - Chavoor

Age: 10 months	<u>TEMPORARY EXPIRES 08/19/13</u>	NEEDS/PROBLEMS/COMMENTS:
	STEPHANIE ROBERTSON, paternal aunt, is Petitioner.	<u>CONTINUED FROM 05/13/13</u> As of 08/13/13, the following notes remain:
	Father: JOSHUA ROBERTSON – Consent & Waiver of Notice filed 03/27/13	1. Need Notice of Hearing .
Cont. from 051313	Mother: DOMANIQUE KITCHENER – Consent & Waiver of Notice filed 04/25/13	2. Need proof of service by mail at least 15 days before the hearing of Notice of Hearing with a copy of the Petition for Appointment of Guardian of the Person or Consent & Waiver of Notice or Declaration of Due Diligence for:
Aff.Sub.Wit.	Paternal grandfather: ORVAL ROBERTSON	- Orval Robertson (paternal grandfather)
✓ Verified	Paternal grandmother: DENISE FANNON	- Denise Fannon (paternal grandmother)
Inventory	Maternal grandparents: UNKNOWN	- Maternal grandfather
PTC	Petitioner alleges that both parents are incarcerated and not able to care for the minor. Petitioner states that CPS has urged her to seek guardianship.	- Maternal grandmother
Not.Cred.	Court Investigator Julie Negrete filed a report on 04/25/13.	
Notice of Hrg		Note: Per CI report, Petitioner stated that the child may have Indian ancestry. A Notice of Indian Child Custody Proceeding was mailed to all the necessary parties. No tribe has responded that they will be intervening in this matter. 60 days elapsed on 08/05/13, the matter is now ready to proceed.
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		Reviewed by: JF
		Reviewed on: 08/13/13
		Updates:
		Recommendation:
		File 8 – Robertson-Kichener

Age: 1		<p>TEMPORARY EXPIRES 08/19/2013</p> <p>MIGUEL MORA, maternal grandfather, is petitioner.</p> <p>Father: Not Listed, Declaration of Due Diligence filed 07/31/2013</p> <p>Mother: JUANA ROSA MORA, Declaration of Due Diligence filed 03/13/2013</p> <p>Paternal Grandfather: Not Listed, Declaration of Due Diligence filed 07/31/2013</p> <p>Paternal Grandmother: Not Listed, Declaration of Due Diligence filed 07/31/2013</p> <p>Maternal Grandmother: Juana Gonzales, Declaration of Due Diligence filed 07/31/2013</p> <p>Petitioner states: the child was abandoned and left in petitioner's care since birth. Petitioner would like to keep him in his family and not be part of the state.</p> <p>Court Investigator Jennifer Young's report filed 05/03/2013.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Minute Order of 07/15/2013: Ruben Hernandez is sworn and interprets for the Petitioner. The Court is advised by the Petitioner that his daughter, Lorena is the only person residing in the home and his sons only come to visit. Examiner notes are provided to the petitioner. The Court directs the petitioner to cure the defects. The Court on its own motion grants a temporary guardianship in favor of Miguel.</p> <p>Minute Order of 05/13/2013: Lorena Mora is sworn and interprets for the petitioner. The petitioner is directed to provide his current address and telephone number to the clerk forthwith. The Court Investigator is directed to complete her investigation of the parties.</p> <p>The following issues remain:</p> <ol style="list-style-type: none"> 1. Need Notice of Hearing. 2. Need proof of personal service fifteen (15) days prior to the hearing of the Notice of Hearing along with a copy of the Petition for Appointment of Guardian or consent and waiver of notice or declaration of due diligence for: <ul style="list-style-type: none"> • Father (Not Listed)- Unless the Court dispenses with notice. <p>Note: Declaration of Due Diligence filed 07/31/2013 states that petitioner was unable to find him or any others who have knowledge of him.</p> <ul style="list-style-type: none"> • Juana Rosa Mora (Mother)- Unless the Court dispenses with notice. <p>Note: Declaration of Due Diligence filed on 03/13/2013 states petitioner has not seen the mother since June 2012.</p> <p>Please see additional page</p>
Cont. from 051313, 071513			
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Reviewed by: LV			
Reviewed on: 07/09/2013			
Updates:			
Recommendation:			
File 9 – Mora			

Court Investigator Jennifer Young's report filed 07/08/2013.

Needs/Problems/Comments (continued)

3. Need proof of service fifteen (15) days prior to the hearing of the Notice of Hearing along with a copy of the Petition for Appointment of Guardian or consent and waiver of notice or declaration of due diligence for:

- Paternal Grandfather (Not Listed)- Unless the Court dispenses with notice

Note: Declaration of Due Diligence filed 07/31/2013 states petitioner could not find any information.

- Paternal Grandmother (Not Listed) – Unless the Court dispenses with notice

Note: Declaration of Due Diligence filed 07/31/2013 states petitioner could not find any information.

- Juana Gonzales (Maternal Grandmother)

Note: Declaration of Due Diligence filed 07/31/2013 states the last contact with the maternal grandmother was seven years ago and she was living in Mexico.

Pro Per Bush, Kimberly Ann (Pro Per Petitioner, maternal grandmother)
 Pro Per Dawson-Singleton, Lakeysa R. (Pro Per Objector, mother)
 Pro Per Singleton, Detrick (Pro Per Objector, father)

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

Age: 9 years	TEMPORARY EXPIRES 7/1/2013; extended to 8/19/2013	NEEDS/PROBLEMS/COMMENTS: Note for Background: Minute Order dated 7/1/2013 [Judge Whitehead] from the hearing on the temporary petition states: Lakeysa Singleton and Detrick Singleton are appearing via CourtCall and object to the petition. Parties agree to allow the Court to speak with the minor in chambers. The temporary is extended to 8/19/2013. The general hearing remains set for 8/19/2013.
	KIMBERLY ANN BUSH , maternal grandmother, is petitioner.	
Cont. from	Father: DETRICK SINGLETON	<ol style="list-style-type: none"> Need <i>Notice of Hearing</i> and proof of personal service of notice with a copy of the <i>Petition for Appointment of Guardian</i>, or <i>Consent to Appointment of Guardian and Waiver of Notice</i>, or a <i>Declaration of Due Diligence</i>, for: <ul style="list-style-type: none"> Lakeysa Dawson-Singleton, mother; Detrick Singleton, father; (Note: Court records do not show proof of notice having been served to any parties. Parents have filed objections and have indicated their intent to appear at the hearing on 8/19/2013.)
<input type="checkbox"/> Aff.Sub.Wit.	Mother: LAKEYSHA DAWSON-SINGLETON	
<input checked="" type="checkbox"/> Verified	Paternal grandfather: Not listed	
<input type="checkbox"/> Inventory	Paternal grandmother: Patricia Brown	
<input type="checkbox"/> PTC	Maternal grandfather: Not listed	
<input type="checkbox"/> Not.Cred.	Petitioner states the child is visiting her here from Hawaii and there is an open CPS investigation of child abuse regarding the child in Honolulu, Hawaii. Petitioner states there is also an open Fresno Police Department case, and the Police questioned the child regarding the abuse. Petitioner states she is concerned for the child's safety and he is afraid of his father and doesn't want to go back to Honolulu. Petitioner states he is concerned for the child's safety if he returns to Honolulu, and she was contacted by Detective Anthony Colon of the Honolulu Police Department who stated he also has concerns regarding the current living arrangements, and she was advised to seek guardianship of her grandson.	
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~Please see additional page~		Reviewed by: LEG Reviewed on: 8/14/13 Updates: Recommendation: File 10 – Singleton

Additional Page 10, Devin Joseph Singleton (GUARD/P) Case No.13CEPR00529

Objections of Detrick Singleton and Lakeysha Dawson-Singleton, parents, filed on 6/28/2013 state:

- They are mentally, physically and emotionally capable of caring for their child;
- They recently reconciled their marriage and have had nothing but opposition from the Petitioner (Kimberly Bush), and Ms. Bush has placed false and misleading reports to CPS in the hopes of obtaining custody for her own shellfish reasons;
- CPS has declined to remove the minor from their care or pursue any type of criminal complaint against them;
- They sent their son to visit his grandmother (Petitioner) on 5/29/2013 for three weeks in order for him to spend time with her, but she refused to put him back on the plane to Hawaii where he resides, in addition to filing for guardianship behind their backs; they only learned about this unscrupulous attempt to adopt their child on 6/20/2013, and state they cannot appear in person on such short notice *[for the temporary hearing on 7/1/2013]*, as Detrick is finishing up his psychology degree at the University of Hawaii and Lakeysha works full time;
- They hope to resolve this matter without further delay and reunite their family.

Court Investigator Jennifer Daniel's Report was filed on 8/13/2013.

NEEDS/PROBLEMS/COMMENTS, continued:

2. Need proof of service by mail of the *Notice of Hearing* with a copy of the *Petition for Appointment of Guardian, or Consent to Appointment of Guardian and Waiver of Notice, or a Declaration of Due Diligence*, for:
 - Patricia Brown, paternal grandmother;
 - Paternal grandfather;
 - Maternal grandfather.

12 Patrick R. Kanaley (GUARD/P)
 Atty Kanaley, Kathleen V.
 Atty Bacud, Kattie Marie

Case No. 13CEPR00537

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

Age:		NEEDS/PROBLEMS/COMMENTS: <u>OFF CALENDAR</u> Request for Dismissal filed 06/25/13
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		Reviewed by: JF
		Reviewed on: 08/15/13
		Updates:
		Recommendation:
		File 12 – Kanaley

Atty Martinez, Christine (pro per – paternal grandmother – temporary guardian/competing petitioner)

Atty Davis, Catherine (pro per – maternal grandmother/Petitioner)

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

Age: 1	<u>GENERAL HEARING 10/07/13</u>		NEEDS/PROBLEMS/COMMENTS:
	<p>CATHERINE DAVIS, maternal grandmother, is Petitioner.</p> <p>Father: JULIAN VALENCIA</p> <p>Mother: JESSICA VALENCIA – Consent & Waiver of Notice filed 08/05/13</p> <p>Paternal grandfather: UNKNOWN Paternal grandmother: CHRISTINE MARTINEZ</p> <p>Maternal grandfather: DECEASED</p> <p>Petitioner alleges that the current guardian's actions make her appear to be unstable. She, by her own admission, suffers from various psychological disorders. Ms. Martinez also drinks heavily even though she is currently in treatment. Petitioner further alleges that she has observed that Ms. Martinez' home to be dirty and that the minor is left in a playpen for much of the day. Further, Ms. Martinez was discovered at the mother's home on 06/30/13 stealing, and physically attacked the minor's mother when she confronted her about the stealing. Petitioner states that Ms. Martinez tried to choke the mother and this all occurred in front of the minor. Petitioner states that the mother now fears Ms. Martinez and none of the maternal family trusts her to care for the minor.</p>		
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			Reviewed on: 08/15/13
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			File 13 – Valencia

1 Fred Otto Loeffler (CONS/PE)

Case No. 13CEPR00655

Atty Downing, Marcella (for Dianne Marie Huerta and Linda Plitt – daughters/Petitioners)

Atty Rube, Melvin (for proposed conservatee)

Atty Janisse, Ryan M. (for Michael “Mick” Loeffler – Objector)

Petition for Appointment of Temporary Conservatorship of the Person and Estate

Age: 90 DOB: 12/10/1922	<p align="center">TEMPORARY GRANTED EX PARTE; EXPIRES 08/19/13</p> <p align="center">GENERAL HEARING: 09/03/13</p> <p>DIANE HUERTA and LINDA PLITT, daughters, are Petitioners and request appointment as temporary Co-Conservators of the Person and as temporary Co-Conservators of the Estate or, in the alternative, that Bruce Bickel be appointed as Conservator of the Estate, with bond set at \$1,850,000.00.</p> <p>Estimated Value of the Estate: Personal property - \$1,700,000.00 Annual income - 23,328.00 Bond recover amt. - 124,467.00 Total - \$1,847,795.00</p> <p>Petitioners allege that their parents had put together estate planning documents intended to provide for them during their elderly years. Recently, Michael Loeffler, son, has unduly influenced their parents to change their durable power of attorney, trustee of their trust, and advanced health care directive changed so that he is now acting on behalf of his parents under these instruments. Petitioners allege that Michael has an “atomic temper” and he uses yelling and intimidation to get his way. Petitioners believe that their parents are now afraid to express their own opinions and defer to Michael. Petitioners indicate that Michael lives in their parents home rent-free and is paid a monthly amount by their parents. The conservatee now resides in a skilled nursing facility and the staff at the facility have reported that Michael has been combative and made multiple complaints regarding the care provided to the conservatee. The conservatee and other family members have no concerns over the care received.</p> <p>Court Investigator Charlotte Bien filed a report on 08/01/13. The report states that it appears Fred Loeffler benefits from assistance in making medical decisions. His diagnosis of Alzheimer's disease prevents him from being able to provide for his personal needs. There was previously an Advanced Health Care Directive in place dated 07/13/13. It is difficult to make a finding that an emergency exists that constitutes the need for a temporary conservatorship of the person. There is conflict among the parties as to whether Dr. and Mrs. Loeffler are being unduly influenced regarding their financial affairs. Dr. and Mrs. Loeffler are the currently acting co-trustees of their trust. The court may find that a temporary conservatorship of the estate is in best interest of the conservatee pending more information.</p> <p align="center">Continued on Page 2</p>	NEEDS/PROBLEMS/ COMMENTS:		
Cont. from 080813, 081413		<p>CONTINUED FROM 08/08/13 Minute Order from 08/08/13 states: The Court orders that Fred Loeffler and Kathleen Loeffler may meet in her apartment as much as they desire so long as they are alone. If Mick Loeffler is in their presence, said meetings shall take place in the cafeteria or other neutral place. The Court orders that the trust funds not be used for any other purpose other than for Fred Loeffler and Kathleen Loeffler's personal care and needs. Mr. Janisse to file his objections by Monday.</p> <p>Court Investigator advised rights on 07/30/13.</p> <p>Note: The Ex Parte was granted with Petitioners as Co-Conservators of the Person and Bruce Bickel as Conservator of the Estate. Bond was posted on 07/31/13 and temporary Letters have issued.</p> <p>Note: The Temporary was granted Ex Parte; therefore if the temporary is extended additional Letter of Conservatorship will need to be submitted.</p> <p>Note to Judge: Bruce Bickel previously served as trustee of the Loeffler Family Trust for a period of time. He is familiar with the family and has filed declaration in support of the petition. Declarations in support of the Petition have also been filed by 3 of the Loeffler's 4 children and staff at the care facility where the Loeffler's now reside. Michael Loeffler stated to the CI that he opposes the Petition.</p>		
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		Reviewed on: 08/15/13		
		Updates:		
		Recommendation:		
		File 1 – Loeffler		

Declaration of Bruce D. Bickel Regarding Suitability for Appointment as Temporary and Permanent Conservator of the Estate filed 08/06/13 states:

1. Declarant received a letter purportedly from Fred and Kathleen Loeffler that states in part, "Kathleen and I feel you are incompetent and want nothing to do with you."
2. Declarant does not believe that the letter was composed by Fred Loeffler for the following reasons:
 - a. According to the Court Investigator's report, Fred Loeffler does not object to the proposed conservator.
 - b. Declarant served as trustee of the Fred and Kathleen for a short period of time, during which there was confusion about the payment of the Sierra View monthly rent. The facts alleged in the letter are not correct. The circumstance was straightened out to the satisfaction of Sierra View and Mrs. Loeffler. However, Mrs. Loeffler requested that Declarant resign as trustee because that was the result desired by her son, Michael, and she admitted to Declarant that, "she could not get Mick to listen to reason."
3. The tenor of the letter is consistent with behavior of Michael that Declarant witnessed, in which he inserts himself into the affairs of his parents, making demands and directions that are inconsistent with the true wishes of his parents.
4. Declarant remains available to serve as the temporary and/or permanent conservator of the estate in this matter. He does not believe that the statements in the letter are sentiments held by Kathleen and Fred Loeffler and does not affect his ability to act in the best interests of the proposed conservatees, but it does confirm his suspicion that they are vulnerable to the undue influence of their son, Michael.

Declaration of Diana Asami filed 08/06/13 states that she received a package with the restraining orders copies of which are attached to the Attachment to Declaration of Diana E. Asami filed 08/07/13.

Declaration of Melvin K. Rube in Opposition to the Petition filed 08/08/13 states:

1. On Wednesday, 08/07/13, during a phone call with Kathleen Loeffler, she confirmed that she and Fred both opposed the conservatorship and wants Declarant to represent them in this matter.
2. Kathleen Loeffler opposes the imposition of a temporary conservatorship of the Estate of Fred Loeffler because she and Fred have planned for their retirement years and created The Loeffler Family Trust. Fred and Kathleen have conveyed all of their assets into the Trust, and all of their assets, including the assets of the Trust, are the community property of Fred and Kathleen, as evidenced by the written *Community Property Agreement* executed by Fred and Kathleen on 02/14/01.
3. Pursuant to Probate Code § 3051 (b)(2), if one spouse has legal capacity and the other spouse has a conservator, the community property is not part of the conservatorship estate. Under Probate Code § 3051 (b)(1), if one spouse has legal capacity has the exclusive management and control of the community property. There is nothing in the petition that provides any legal or factual basis establishing the lack of legal capacity on the part of Kathleen. Therefore, in the event that the court imposes a conservatorship on the estate of Fred, none of the assets in the Trust would be subject to the conservatorship.
4. Further, the Trust is set up so that if Fred and Kathleen are no longer able to act, their son Michael is to appoint a professional fiduciary to act as trustee. Kathleen and Mick have contacted Pat Dicken of Perine & Dicken for the purpose of her acting as successor trustee of the Trust and as a temporary conservator of Fred's estate if conservatorship is imposed on Fred's estate.

Continued on Page 3

5. Kathleen objects to the imposition of a temporary conservatorship of the person of Fred for the following reasons:
 - a. On 07/18/13, Fred executed a California Health Care Directive under *Probate Code* § 4701 naming Mick G. Loeffler as his agent for medical decisions and as his **conservator of his person** if a conservator of the person is required to be appointed by the court. At the same time Fred also executed a revocation of all previous health care directives, which was sent to petitioners.
 - b. In anticipation of a legal challenge by Linda Plitt, Diane M. Huerta and Samuel Loeffler to the Health Care Directive, before Fred executed the document, steps were taken to ensure that Fred had the capacity to sign a new Health Care Directive and that he was not being influenced in his decision by (i) reviewing a report from Loren I. Alving, M.D. of University Neurology Associates, dated 06/20/13 regarding Fred's capacity to designate who he wants to be in charge of his health care decisions. Dr. Alving concluded that Fred's did have capacity to designate who he wants to be in charge of his health care decisions, (ii) Declarant had attorney Gary L. Motsenbocker interview Fred for approximately 30 minutes outside of the presence of Mick Loeffler and Declarant. After the conference, Mr. Motsenbocker concluded that Fred was not being influenced by Mick Loeffler and had the capacity to execute a new Health Care Directive and acted as a witness to the Health Care Directive, and (iii) pursuant to *Probate Code* § 1810, the court should honor Fred's decision to appoint Mick G. Loeffler as the conservator of the person of Fred Otto Loeffler.
6. The Petition should be denied in its entirety. Even if the Court imposes a conservatorship over the Fred's estate, the assets of the Trust are not part of Fred's estate in that said assets are the community property of Fred and Kathleen and neither the petition nor the accompanying declarations establish the "good cause" required under *Probate Code* § 2250(c) and California case law. Further, Fredn's Health Care Directive signed by him on 07/18/13 should be given preference. After all, if the court concludes that Fred had the capacity to make the statements in the probate investigator's report, then he should have the capacity to determine who he wants to make medical decisions for himself and who he wants as the conservator of his person.

Declaration of M. Kip Faria filed 08/08/13 states:

1. On 08/06/13, he traveled to the home of Kathleen Loeffler to personally serve the conservatorship documents on Mick Loeffler. When he arrived at the residence at approximately 5:24pm, he could hear a man, later identified as Mick Loeffler, talking loudly and sternly. Declarant stood at the door and listened for approximately 25 seconds during which time he heard Mick saying, "I read the court papers and Bruce pretty much lied throughout them." Declarant then rang the doorbell and Mick answered the door. Declarant identified himself and was invited inside by Mick. Kathleen and Fred Loeffler were present with Mick and they were all seated at the kitchen table eating dinner. Declarant then proceeded to serve the paperwork to all parties involved.

Supplemental Declaration of Marcella Downing, Esq. in Support of Petition for Temporary and Permanent Conservatorship of Kathleen Loeffler, Proposed Conservatee filed 08/12/13 states:

1. A conflict of interest exists with Mr. Rube representing both Kathleen and Fred Loeffler. According to California Rules of Professional Conduct, Rule 3-310(c)(1), "A member shall not, without informed written consent of each client accept representation of more than one client in a matter in which the interest of the clients potentially conflict..." Mr. Rube's fee agreement with the Loeffler's does not include any written waiver of this conflict.

Continued on Page 4

2. Mr. Loeffler has stated to the Court Investigator that he does not object to his daughters acting as his conservator. Yet, Mr. Rube is objecting because, as he admits in his declaration, "Kathleen confirmed with me that she wants me to represent both her and Fred in these conservatorship proceedings and that she and Fred do not want a conservatorship imposed on their persons or estates...and she and Fred do not want Bruce Bickel to serve...nor does she and Fred want Diane Huerta and/or Linda Plitt to act as conservators.." Clearly, Mr. Rube is taking direction from Mrs. Loeffler which is directly in opposition to the stated desires of Mr. Loeffler. Petitioner's respectfully submit that each of the Loefflers deserve to be represented by an attorney who does not have divided loyalties.
3. Probate Code § 1810 states, "if the proposed conservatee has sufficient capacity at the time to form an intelligent preference, the proposed conservatee may nominate a conservator...**unless the court finds that the appointment of the nominee is not in the best interests of the proposed conservatee.**" Regardless of the findings as it applies to the proposed conservatee's capacity, the evidence shows a pattern of violent behavior, hostile threats and mannerisms on the part of Mick Loeffler which would put any reasonable person in fear of disagreeing with him. It is not in the best interest of the proposed conservatee to allow Mick Loeffler to act as the holder of either the healthcare power of attorney or the durable power of attorney. Petitioners request a court order that all powers of attorney, both durable and for healthcare, be set aside as allowed by the code.
4. Evidence filed and that will be provided at the final hearing show a pattern of behavior which includes violence, the threat of violence, and intimidation for the purpose of financial gain. Although the proposed conservatee has put in place a system for payment of bills and management of his finances, this system is not working to substantially manage his financial resources because the very person he has entrusted to pay her bills, Mick Loeffler, is using Mr. Loeffler's money to enrich himself (Mick) and living in Mr. Loeffler's home rent free. It is believed that upon an audit by a forensic accountant, it will be found that Mick has also used the proposed conservatee's funds to pay his own expenses.
5. Undue influence exists where "the evidence is of such a nature as to warrant the inference that the will was the direct result of the influence exerted for the purpose of procuring it, and was not the natural result of the uncontrolled will of the testatrix." *In re Hettermann's Estate*, 48 Cal.App.2d 263, 273 (1941) citing *Estate of Arnold*, 147 Cal. [583], 589, 82 P. 252; *Estate of Welch*, 6 Cal.App. [44], 50, 91 P. 336." The evidence will show Mick Loeffler has taken his parents from attorney to attorney in an attempt to force his will which is contrary to their long-held testamentary intent. Prior powers of attorney and trusts which have been in place for decades are offered as essentially the "legislative history" of Mr. and Mrs. Loeffler's dispositive wishes. Mick Loeffler has influenced his parents, and in particular his mother, to fire one advisor after another when the advisor would not follow his directions, which would result in an unnatural treatment of the intended beneficiaries of the trust and would not allow Mick full control of the powers of attorney, through which he could and has further isolated his parents for the purpose of exerting continuing pressure.
6. Mr. Loeffler has been pressured by Mick to only parrot back what he is told to say and to isolate himself from all others who might help him. Evidence of this fact was provided in the note given to Mr. Loeffler by Mick. Testimony will show Mr. Loeffler is now so intimidated he shakes profusely and gets very upset if he is asked to speak to anyone other than Mick, his wife, or Mr. Rube. Petitioners believe Mr. Loeffler's change in behavior towards his other 3 children and his change in emotions are a result of what might be analogous to one suffering from post traumatic stress syndrome and is likely to rise to the level of elder abuse. An examination by a neuropsychologist is necessary. According to Dr. Alvings' report, Mr. Loeffler's scores on the SLUMS test was 14/30. Petitioners intend to show that with this level of comprehension in conjunction with the undue influence he is powerless to resist and that the establishment of a conservatorship of the estate and person is necessary.

Continued on Page 5

7. Evidence will show that Mr. Loeffler is unable to manage his own finances. The Court Investigator's report supports this assertion. Dr. Alvings June 2013 report appears to state that Mr. Loeffler had the capacity to make decisions regarding who should make his healthcare decisions, it does not appear she tested his ability to withstand undue influence. The Court Investigator's report shows that Mrs. Loeffler is willing to give Mick Loeffler as much money as he requests, stating it is compensation for care when, in fact, it appears to be payments made in the hopes that these payments will cause Mick Loeffler to control his temper. This pattern of abuse has continued for such a time that it is likely Mrs. Loeffler has now confused her desire to avoid abuse with love and affection. The consequence to Mr. Loeffler is to put his finances at risk of being diminished to the point that his needs will not be met. A neuropsychologist's examination is required to determine the extent of the harm inflicted by Mick Loeffler and Mr. Loeffler's ability to form his own opinions and withstand undue influence.
8. Declarant respectfully submits that sufficient evidence has been produced to warrant the continuance of the temporary conservatorship of the estate and the person and warrant an order of examination of the proposed conservatee by a neuropsychologist.

Objection to Petition for Appointment of Temporary Conservator(s) of the Person and Estate of Fred Loeffler filed 08/12/13 states:

1. Objector, Mick Loeffler, is the son of Fred and Kathleen Loeffler.
2. The thrust of petitioner's petition is that Objector is isolating, emotionally abusing, financially abusing, and interfering with those providing care for the proposed conservatee. In actual fact, Objector is a devoted son who has attended to his parents' needs and his parents are grateful for his efforts. Objector has engaged in no financial, physical, or emotional abuse and is not isolating his parents.
3. Objector believes that petitioners took months (if not years) to prepare their case, yet brought the action ex parte. Petitioners have had the opportunity to obtain declarations and interview witnesses, but because of the litigation tactics employed, have denied the Objector (and the proposed conservatee's attorney) the same opportunity. Petitioners failed to serve Mr. Rube with the Petition notwithstanding the fact that they were aware Mr. Rube represented (and represents) the proposed conservatee. Moreover, to date, Petitioners have only served Objector's attorney with the pleadings pertaining to the permanent conservatorship proceeding despite a 09/03/13 hearing date on that matter. This is consistent with their efforts to prevent any meaningful opposition from being assembled.
4. Such actions have prejudiced Objector by limiting his ability to engage in discovery or otherwise prepare his opposition, however, Petitioners are unable to meet the *clear and convincing* evidentiary standard to support their petition. On the one hand, Petitioners seek to rely on the Mr. Loeffler's statement to the court investigator that he consents to the conservatorship, while on the other hand they seek to disregard Mr. Mosenbocker's and Mr. Rube's thorough interview with him wherein it was determined that he had capacity to execute his Advanced Health Care Directive. Does Mr. Loeffler have capacity to make decisions or not? Interestingly, Mrs. Loeffler opposes the conservatorship proceedings and yet Petitioners wish to give no credence to her opposition. It appears for the Petitioners it depends on what Mr. and Mrs. Loeffler's decisions are as to whether they should be given any weight. Moreover, on 06/20/13, Dr. Sorenson, M.D. met (alone) with Mr. Loeffler and determined that he had the capacity to make the decision as to who would make health care decisions for him.
5. A thread that runs through the Petitioners petition and supporting declaration is that Objector is some sort of violent threat. Yet, none of the concerns or allegations have ever materialized. Petitioners can point to absolutely no evidence of Objector engaging in physical abuse or becoming violent with anyone. Admittedly, Objector is a retired police officer and gun collector. But Objector is well within his constitutional rights to own firearms. Objector does not have a concealed carry permit and does not carry firearms. There are no allegations of brandishing firearms or otherwise threatening anyone with firearms.

Continued on Page 6

6. Objector has been the family member who spends time with the proposed conservatee day in and day out. He has been with the proposed conservatee when he rings for assistance to use the restroom and seen him have to wait several minutes for an assistant to arrive only to turn off the ringer and provide an excuse as to why immediate assistance cannot be provided. The proposed conservatee suffers from mild incontinence and irritable bowel syndrome and thus not attending to his needs can lead to him urinating on himself. Objector wants the best for his parents and is willing to advocate for them. When he witnesses consistently poor care, he has grown frustrated and attempted to garner changes through the prescribed avenues. Sure, Objector has gotten upset with the staff at Sierra View, but when did caring for your parents and expecting the best care possible become a bad thing?
7. Petitioners assertion that Objector has isolated their parents is patently false. The proposed conservatee resides at Sierra View Homes, Objector does not have the ability to deny anyone access to see the proposed conservatee, any of their children can visit when they please. Objector does not have them under "lock and key". Moreover, Objector does not spend every moment of every day at Sierra View Homes. If Petitioners dislike for their brother is so deep that they do not want to see him and thereby forego visiting with their parents, that is not "isolation". There is more than adequate time for Petitioners to visit. The fact is petitioners simply choose not to take advantage of the opportunities they have to visit their parents. Despite Petitioners having the opportunity to visit with their parents as they please, Objector is willing to enter into a formal mutually agreeable visitation schedule to ensure everyone in the family has equal opportunity to separately visit with the proposed conservatee. However, in no circumstance will the Objector agree to forego his relationship with his parents simply because his siblings do not like him.
8. The allegations that Objector is physically, emotionally, or financially abusing the proposed conservatee are false. The proposed conservatee lives at a facility whose entire staff are mandated reporters and must report physical abuse, isolation, financial elder abuse, or neglect. A mandated reporter shall also report if they are told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, isolation or financial abuse. While the staff at Sierra View Homes supplied a declaration in support of the petition, there is no evidence before the court that there has been any report or investigation. Even if a report had been made, there has been no investigation or anything to show that a report had any merit. Moreover, there has been no APS or Fresno Police Department investigation.
9. Objector has received no undue benefit from his parents. All of the assets of the proposed conservatee can be accounted for. The allegations regarding financial elder abuse cannot be substantiated.
10. The Petitioners seek to take away the proposed conservatee's ability to choose who makes decisions for him. They do this in the face of evidence that he has capacity to make these decisions for himself and that he has exercised his ability to choose. While the petitioners may not like the decisions their parents have made, and clearly do not like their brother, it does not give them the right to impose their will over that of their parents.
11. Further, Objector objects to these proceedings as follows:
 - a. Conservatorship of the Estate is not the least restrictive alternative: The court must make an express finding that the granting of a conservatorship estate is the least restrictive alternative needed for the protection of the proposed conservatee. Proposed conservatee is the settlor of the Loeffler Family Trust dated 08/01/72 (the "Trust"), as amended with his spouse. Pursuant to the terms of the second amendment and full restatement of the Trust, if Bruce Bickel ceased acting as successor trustee of the Trust, the proposed conservatee and his spouse became trustees. Objector is granted authority to nominate a Licensed Professional Fiduciary to act in such capacity upon the vacancy of the office of trustee. There is no dispute as to the validity of this instrument. Objector exercised his authority to nominate Pat Dicken of Dicken & Perine to serve as trustee. Objector believes that the bulk of the Loeffler's assets are held in the Trust. To the extent there are non-trust assets, Objector proposes Ms. Dicken be appointed the temporary conservator of the estate in order to marshal any such assets and deliver them to herself, as trustee of the Trust, thereby rendering the need for a permanent conservatorship of the estate moot.

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- b. Conservatorship of the Person is not the least restrictive alternative: Proposed conservatee executed an Advanced Health Care Directive ("AHCD") prepared by attorney Melvin Rube. Mr. Rube anticipated a challenge to the validity of the AHCD and had the proposed conservatee meet with Gary Motsenbocker, whose experience in the trust and estates field is extensive and reputation is exceptional, to interview the proposed conservatee. Both Mr. Rube and Mr. Motsenbocker were satisfied that the proposed conservatee had the requisite capacity to execute the AHCD. Moreover, it was determined by Dr. Sorenson that proposed conservatee had the capacity to make such a determination. The AHCD nominates Objector to make healthcare decisions for the proposed conservatee. Therefore establishing a conservatorship of the person is not the least restrictive alternative and should be denied.
- c. Should the Court determine that a conservatorship is necessary, proposed conservatee nominated Objector as his conservator of the person: Probate Code § 1810 provides that if, at the time of nominating a party, the proposed conservatee has sufficient capacity to form an intelligent preference, the court SHALL appoint the proposed conservatee's nominee, unless the court finds that the appointment is not in the best interest of the proposed conservatee. The proposed conservatee was interviewed by two attorneys and a neurologist who determined that the proposed conservatee had the capacity to execute the AHCD. The AHCD nominates Objector to serve as the attorney-in-fact to make health care decisions for the proposed conservatee. In the event conservatorship of the person of the proposed conservatee is deemed necessary, the AHCD nominates Objector. Therefore, a conservatorship of the person is unnecessary.
- d. Petitioners fail to meet evidentiary standard: Probate Code § 1810(e) provides the standard of proof for the appointment of a conservator is **clear and convincing evidence**. The evidence before the court does not meet the clear and convincing standard and thus cannot support the appointment of a temporary conservatorship of the person or estate.
- e. Evidentiary objections: The court shall hear and determine the matter of the establishment of the conservatorship according to the law and procedure relating to the trial of civil actions. Probate Code § 1827.
 - (1) Evidentiary Objection: Declaration of Diana E. Asami in Support of Conservatorship of the Person of Fred Loeffler: Objector objects to the declaration of Diana E. Asami and the attachment thereto on the following grounds:
 - (a) It is inadmissible character evidence under Evidence Code § 1101 (a).
 - (b) It is irrelevant. Relationships between intimate partners and husband and wife differ from relationships with one's parents. Evidence Code § 350.
 - (c) Its probative value is slight compared by its prejudicial impact. Evidence Code § 352.

Petition for Appointment of Temporary Conservatorship of the Person and Estate

Age: 84 DOB: 05/11/1929		<u>TEMPORARY GRANTED EX PARTE:</u> <u>EXPIRES 08/08/13</u>		NEEDS/PROBLEMS/ COMMENTS: <u>CONTINUED FROM 08/08/13</u> <u>Minute Order from 08/08/13</u> states: The Court orders that Fred Loeffler and Kathleen Loeffler may meet in her apartment as much as they desire so long as they are alone. If Mick Loeffler is in their presence, said meetings shall take place in the cafeteria or other neutral place. The Court orders that the trust funds not be used for any other purpose other than for Fred Loeffler and Kathleen Loeffler's personal care and needs. Mr. Janisse to file his objections by Monday.
		<u>GENERAL HEARING: 09/03/13</u>		
Cont. from 080813		DIANE HUERTA and LINDA PLITT, daughters, are Petitioners and request appointment as temporary Co-Conservators of the Person and as temporary Co-Conservators of the Estate or, in the alternative, that Bruce Bickel be appointed as Conservator of the Estate, with bond set at \$1,850,000.00.		Court Investigator advised rights on 07/30/13. Note: The Ex Parte was granted with Petitioners as Co-Conservators of the Person and Bruce Bickel as Conservator of the Estate. Bond was posted on 07/31/13 and temporary Letters have issued. Note: The Temporary was granted Ex Parte; therefore if the temporary is extended additional Letter of Conservatorship will need to be submitted. Note to Judge: Bruce Bickel previously served as trustee of the Loeffler Family Trust for a period of time. He is familiar with the family and has filed declaration in support of the petition. Declarations in support of the Petition have also been filed by 3 of the Loeffler's 4 children and staff at the care facility where the Loeffler's now reside. Michael Loeffler stated to the CI that he opposes the Petition.
<input type="checkbox"/>	Aff.Sub.Wit.			
<input checked="" type="checkbox"/>	Verified			
<input type="checkbox"/>	Inventory			
<input type="checkbox"/>	PTC			
<input type="checkbox"/>	Not.Cred.			
<input checked="" type="checkbox"/>	Notice of Hrg			
<input checked="" type="checkbox"/>	Aff.Mail	w/		
<input type="checkbox"/>	Aff.Pub.			
<input type="checkbox"/>	Sp.Ntc.			
<input checked="" type="checkbox"/>	Pers.Serv.	w/		
<input checked="" type="checkbox"/>	Conf. Screen			
<input type="checkbox"/>	Letters	x		
<input checked="" type="checkbox"/>	Duties/Supp			
<input type="checkbox"/>	Objections			
<input type="checkbox"/>	Video Receipt			
<input checked="" type="checkbox"/>	CI Report			
<input type="checkbox"/>	9202			
<input type="checkbox"/>	Order	x		
<input type="checkbox"/>	Aff. Posting			
<input type="checkbox"/>	Status Rpt			
<input type="checkbox"/>	UCCJEA			
<input type="checkbox"/>	Citation			
<input type="checkbox"/>	FTB Notice			
		Estimated Value of the Estate: Personal property - \$1,700,000.00 Annual income - 23,328.00 Bond recover amt. - 124,467.00 Total - \$1,847,795.00		Court Investigator Charlotte Bien filed a report on 08/01/13. The report states that it appears Kathleen Loeffler is currently capable of living in the independent setting at Sierra View Homes. She states that her basic and treatment needs are being met. She indicates that her son provides transportation to all her medical appointments. It is difficult to make a finding that an emergency exists that constitutes the need for a temporary conservatorship of the person. There is conflict among the parties as to whether or not Mrs. Loeffler is being unduly influenced regarding her and her husband's financial affairs. The court may find that a temporary conservatorship of the estate is in the proposed conservatee's best interest pending more information.
		Continued on Page 2		
				Reviewed by: JF
				Reviewed on: 08/15/13
				Updates:
				Recommendation:
				File 2 – Loeffler

Declaration of Bruce D. Bickel Regarding Suitability for Appointment as Temporary and Permanent Conservator of the Estate filed 08/06/13 states:

5. Declarant received a letter purportedly from Fred and Kathleen Loeffler that states in part, "Kathleen and I feel you are incompetent and want nothing to do with you."
6. Declarant does not believe that the letter was composed by Fred Loeffler for the following reasons:
 - c. According to the Court Investigator's report, Fred Loeffler does not object to the proposed conservator.
 - d. Declarant served as trustee of the Fred and Kathleen for a short period of time, during which there was confusion about the payment of the Sierra View monthly rent. The facts alleged in the letter are not correct. The circumstance was straightened out to the satisfaction of Sierra View and Mrs. Loeffler. However, Mrs. Loeffler requested that Declarant resign as trustee because that was the result desired by her son, Michael, and she admitted to Declarant that, "she could not get Mick to listen to reason."
7. The tenor of the letter is consistent with behavior of Michael that Declarant witnessed, in which he inserts himself into the affairs of his parents, making demands and directions that are inconsistent with the true wishes of his parents.
8. Declarant remains available to serve as the temporary and/or permanent conservator of the estate in this matter. He does not believe that the statements in the letter are sentiments held by Kathleen and Fred Loeffler and does not affect his ability to act in the best interests of the proposed conservatees, but it does confirm his suspicion that they are vulnerable to the undue influence of their son, Michael.

Declaration of Diana Asami filed 08/06/13 states that she received a package with the restraining orders copies of which are attached to the Attachment to Declaration of Diana E. Asami filed 08/07/13.

Declaration of Melvin K. Rube in Opposition to the Petition filed 08/08/13 states:

7. On Wednesday, 08/07/13, during a phone call with Kathleen Loeffler, she confirmed that she and Fred both opposed the conservatorship and wants Declarant to represent them in this matter.
8. Kathleen Loeffler opposes the imposition of a temporary conservatorship of her Estate because she and Fred have planned for their retirement years and created The Loeffler Family Trust. Fred and Kathleen have conveyed all of their assets into the Trust, and all of their assets, including the assets of the Trust, are the community property of Fred and Kathleen, as evidenced by the written *Community Property Agreement* executed by Fred and Kathleen on 02/14/01.
9. Pursuant to Probate Code § 3051 (b)(2), if one spouse has legal capacity and the other spouse has a conservator, the community property is not part of the conservatorship estate. Under Probate Code § 3051 (b)(1), if one spouse has legal capacity has the exclusive management and control of the community property. There is nothing in the petition that provides any legal or factual basis establishing the lack of legal capacity on the part of Kathleen.
10. Further, the Trust is set up so that if Fred and Kathleen are no longer able to act, their son Michael is to appoint a professional fiduciary to act as trustee. Kathleen and Mick have contacted Pat Dicken of Perine & Dicken for the purpose of her acting as successor trustee of the Trust and as a temporary conservator of Fred's estate if conservatorship is imposed on Fred's estate. Kathleen is opposed to Bruce Bickel acting as the temporary conservator of her estate.

Continued on Page 3

11. Kathleen objects to the imposition of a temporary conservatorship of her person for the following reasons:
 - c. On 07/18/13, Kathleen executed a California Health Care Directive under *Probate Code* § 4701 naming Mick G. Loeffler as her agent for medical decisions and as **conservator of her person** if a conservator of the person is required to be appointed by the court. At the same time Kathleen also executed a revocation of all previous health care directives, which was sent to petitioners.
 - d. In anticipation of a legal challenge by Linda Plitt, Diane M. Huerta and Samuel Loeffler to the Health Care Directive, before Kathleen executed the document, steps were taken to ensure that Kathleen had the capacity to sign a new Health Care Directive and that she was not being influenced in her decision by (i) having attorney Gary L. Motsenbocker interview Kathleen for approximately 30 minutes outside of the presence of Mick Loeffler and Declarant. After the conference, Mr. Motsenbocker concluded that Kathleen was not being influenced by Mick Loeffler and had the capacity to execute a new Health Care Directive and acted as a witness to the Health Care Directive, and (iii) pursuant to *Probate Code* § 1810, the court should honor Kathleen's decision to appoint Mick G. Loeffler as the conservator of her person if such a conservatorship is imposed.
12. The Petition should be denied in its entirety. Even if the Court imposes a conservatorship over the Kathleen's estate, the assets of the Trust are not part of Kathleen's estate in that said assets are the community property of Fred and Kathleen and neither the petition nor the accompanying declarations establish the "good cause" required under *Probate Code* § 2250(c) and California case law. Further, Kathleen's Health Care Directive signed by her on 07/18/13 should be given preference.

Declaration of M. Kip Faria filed 08/08/13 states:

2. On 08/06/13, he traveled to the home of Kathleen Loeffler to personally serve the conservatorship documents on Mick Loeffler. When he arrived at the residence at approximately 5:24pm, he could hear a man, later identified as Mick Loeffler, talking loudly and sternly. Declarant stood at the door and listened for approximately 25 seconds during which time he heard Mick saying, "I read the court papers and Bruce pretty much lied throughout them." Declarant then rang the doorbell and Mick answered the door. Declarant identified himself and was invited inside by Mick. Kathleen and Fred Loeffler were present with Mick and they were all seated at the kitchen table eating dinner. Declarant then proceeded to serve the paperwork to all parties involved.

Supplemental Declaration of Marcella Downing, Esq. in Support of Petition for Temporary and Permanent Conservatorship of Kathleen Loeffler, Proposed Conservatee filed 08/12/13 states:

9. A conflict of interest exists with Mr. Rube representing both Kathleen and Fred Loeffler. According to California Rules of Professional Conduct, Rule 3-310(c)(1), "A member shall not, without informed written consent of each client accept representation of more than one client in a matter in which the interest of the clients potentially conflict..." Mr. Rube's fee agreement with the Loeffler's does not include any written waiver of this conflict.
10. Mr. Loeffler has stated to the Court Investigator that he does not object to his daughters acting as his conservator. Yet, Mr. Rube is objecting because, as he admits in his declaration, "Kathleen confirmed with me that she wants me to represent both her and Fred in these conservatorship proceedings and that she and Fred do not want a conservatorship imposed on their persons or estates...and she and Fred do not want Bruce Bickel to serve...nor does she and Fred want Diane Huerta and/or Linda Plitt to act as conservators.." Clearly, Mr. Rube is taking direction from Mrs. Loeffler which is directly in opposition to the stated desires of Mr. Loeffler. Petitioner's respectfully submit that each of the Loefflers deserve to be represented by an attorney who does not have divided loyalties.

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11. Probate Code § 1810 states, "if the proposed conservatee has sufficient capacity at the time to form an intelligent preference, the proposed conservatee may nominate a conservator...**unless the court finds that the appointment of the nominee is not in the best interests of the proposed conservatee.**" Regardless of the findings as it applies to the proposed conservatee's capacity, the evidence shows a pattern of violent behavior, hostile threats and mannerisms on the part of Mick Loeffler which would put any reasonable person in fear of disagreeing with him. It is not in the best interest of the proposed conservatee to allow Mick Loeffler to act as the holder of either the healthcare power of attorney or the durable power of attorney. Petitioners request a court order that all powers of attorney, both durable and for healthcare, be set aside as allowed by the code.
12. Evidence filed and that will be provided at the final hearing show a pattern of behavior which includes violence, the threat of violence, and intimidation for the purpose of financial gain. Although the proposed conservatee has put in place a system for payment of bills and management of her finances, this system is not working to substantially manage her financial resources because the very person she has entrusted to pay her bills, Mick Loeffler, is using her money to enrich himself (Mick) and living in her home rent free. It is believed that upon an audit by a forensic accountant, it will be found that Mick has also used the proposed conservatee's funds to pay his own expenses.
13. Undue influence exists where "the evidence is of such a nature as to warrant the inference that the will was the direct result of the influence exerted for the purpose of procuring it, and was not the natural result of the uncontrolled will of the testatrix." *In re Hettermann's Estate*, 48 Cal.App.2d 263, 273 (1941) citing *Estate of Arnold*, 147 Cal. [583], 589, 82 P. 252; *Estate of Welch*, 6 Cal.App. [44], 50, 91 P. 336." The evidence will show Mick Loeffler has taken his parents from attorney to attorney in an attempt to force his will which is contrary to their long-held testamentary intent. Prior powers of attorney and trusts which have been in place for decades are offered as essentially the "legislative history" of Mr. and Mrs. Loeffler's dispositive wishes. Mick Loeffler has influenced his parents, and in particular his mother, to fire one advisor after another when the advisor would not follow his directions, which would result in an unnatural treatment of the intended beneficiaries of the trust and would not allow Mick full control of the powers of attorney, through which he could and has further isolated his parents for the purpose of exerting continuing pressure.
14. Mrs. Loeffler has admitted as noted in the Court Investigator's report, that she must stop listening and begin praying that Mick Loeffler will be able to control himself when he starts yelling. Petitioners believe that Mrs. Loeffler's change in behavior towards her other three children and her change in emotions are a result of what might be analogous to one suffering from post traumatic stress syndrome. An examination by a neuropsychologist is necessary. Mrs. Loeffler's statement that she stops listening and prays Mick will get under control when he loses his temper is evidence that she is unable to remain mentally present when he is out of control. Petitioner's believe that Linda Plitt's testimony in her declaration that her mother fell asleep during Mick's four hour session of yelling is further evidence of the stress Mrs. Loeffler has been under for years.
15. Evidence will show that Mrs. Loeffler does not know what she has in her bank account and to whom she is talking. The Court Investigator's report shows that Mrs. Loeffler is willing to give Mick as much money as he requests, stating it is compensation for care when, in fact, it appears to be payments made in the hopes that these payments will cause Mick to control his temper. This pattern of abuse has continued for such a time that it is likely Mrs. Loeffler has now confused her desire to avoid abuse with love and affection. A neuropsychologist's examination is required to determine the extent of harm inflicted by Mick Loeffler and Mrs. Loeffler's ability to form her own opinions and withstand undue influence.
16. Declarant respectfully submits that sufficient evidence has been produced to warrant the continuance of the temporary conservatorship of the estate and the person and warrant an order of examination of the proposed conservatee by a neuropsychologist.

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Objection to Petition for Appointment of Temporary Conservator(s) of the Person and Estate of Fred Loeffler filed 08/12/13 states:

12. Objector, Mick Loeffler, is the son of Fred and Kathleen Loeffler.
13. The thrust of petitioner's petition is that Objector is isolating, emotionally abusing, financially abusing, and interfering with those providing care for the proposed conservatee. In actual fact, Objector is a devoted son who has attended to his parents' needs and his parents are grateful for his efforts. Objector has engaged in no financial, physical, or emotional abuse and is not isolating his parents.
14. Objector believes that petitioners took months (if not years) to prepare their case, yet brought the action ex parte. Petitioners have had the opportunity to obtain declarations and interview witnesses, but because of the litigation tactics employed, have denied the Objector (and the proposed conservatee's attorney) the same opportunity. Petitioners failed to serve Mr. Rube with the Petition notwithstanding the fact that they were aware Mr. Rube represented (and represents) the proposed conservatee. Moreover, to date, Petitioners have only served Objector's attorney with the pleadings pertaining to the permanent conservatorship proceeding despite a 09/03/13 hearing date on that matter. This is consistent with their efforts to prevent any meaningful opposition from being assembled.
15. Such actions have prejudiced Objector by limiting his ability to engage in discovery or otherwise prepare his opposition, however, Petitioners are unable to meet the *clear and convincing* evidentiary standard to support their petition. On the one hand, Petitioners seek to rely on the Mr. Loeffler's statement to the court investigator that he consents to the conservatorship, while on the other hand they seek to disregard Mr. Motsenbocker's and Mr. Rube's thorough interview with him wherein it was determined that he had capacity to execute his Advanced Health Care Directive. Does Mr. Loeffler have capacity to make decisions or not? Interestingly, Mrs. Loeffler opposes the conservatorship proceedings and yet Petitioners wish to give no credence to her opposition. It appears for the Petitioners it depends on what Mr. and Mrs. Loeffler's decisions are as to whether they should be given any weight. Moreover, on 06/20/13, Dr. Sorenson, M.D. met (alone) with Mr. Loeffler and determined that he had the capacity to make the decision as to who would make health care decisions for him.
16. A thread that runs through the Petitioners petition and supporting declaration is that Objector is some sort of violent threat. Yet, none of the concerns or allegations have ever materialized. Petitioners can point to absolutely no evidence of Objector engaging in physical abuse or becoming violent with anyone. Admittedly, Objector is a retired police officer and gun collector. But Objector is well within his constitutional rights to own firearms. Objector does not have a concealed carry permit and does not carry firearms. There are no allegations of brandishing firearms or otherwise threatening anyone with firearms.
17. Objector has been the family member who spends time with the proposed conservatee day in and day out. He has been with the Dr. Loeffler when he rings for assistance to use the restroom and seen him have to wait several minutes for an assistant to arrive only to turn off the ringer and provide an excuse as to why immediate assistance cannot be provided. The proposed conservatee suffers from mild incontinence and irritable bowel syndrome and thus not attending to his needs can lead to him urinating on himself. Objector wants the best for his parents and is willing to advocate for them. When he witnesses consistently poor care, he has grown frustrated and attempted to garner changes through the prescribed avenues. Sure, Objector has gotten upset with the staff at Sierra View, but when did caring for your parents and expecting the best care possible become a bad thing?
18. Petitioners assertion that Objector has isolated their parents is patently false. The proposed conservatee resides at Sierra View Homes, Objector does not have the ability to deny anyone access to see the proposed conservatee, any of their children can visit when they please. Objector does not have them under "lock and key". Moreover, Objector does not spend every moment of every day at Sierra View Homes. If Petitioners dislike for their brother is so deep that they do not want to see him and thereby forego visiting with their parents, that is not "isolation". There is more than adequate time for Petitioners to visit. The fact is petitioners simply choose not to take advantage of the opportunities they have to visit their parents. Despite Petitioners having the opportunity to visit with their parents as they please, Objector is willing to enter into a formal mutually agreeable visitation schedule to ensure everyone in the family has equal opportunity to separately visit with the proposed conservatee. However, in no circumstance will the Objector agree to forego his relationship with his parents simply because his siblings do not like him.

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19. The allegations that Objector is physically, emotionally, or financially abusing the proposed conservatee are false. The proposed conservatee lives at a facility whose entire staff are mandated reporters and must report physical abuse, isolation, financial elder abuse, or neglect. A mandated reporter shall also report if they are told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, isolation or financial abuse. While the staff at Sierra View Homes supplied a declaration in support of the petition, there is no evidence before the court that there has been any report or investigation. Even if a report had been made, there has been no investigation or anything to show that a report had any merit. Moreover, there has been no APS or Fresno Police Department investigation.
20. Objector has received no undue benefit from his parents. All of the assets of the proposed conservatee can be accounted for. The allegations regarding financial elder abuse cannot be substantiated.
21. The Petitioners seek to take away the proposed conservatee's ability to choose who makes decisions for her. They do this in the face of evidence that she has capacity to make these decisions for herself and that she has exercised her ability to choose. While the petitioners may not like the decisions their parents have made, and clearly do not like their brother, it does not give them the right to impose their will over that of their parents.
22. Further, Objector objects to these proceedings as follows:
 - f. Conservatorship of the Estate is not the least restrictive alternative: The court must make an express finding that the granting of a conservatorship estate is the least restrictive alternative needed for the protection of the proposed conservatee. Proposed conservatee is the settlor of the Loeffler Family Trust dated 08/01/72 (the "Trust"), as amended with her spouse. Pursuant to the terms of the second amendment and full restatement of the Trust, if Bruce Bickel ceased acting as successor trustee of the Trust, the proposed conservatee and her spouse became trustees. Objector is granted authority to nominate a Licensed Professional Fiduciary to act in such capacity upon the vacancy of the office of trustee. There is no dispute as to the validity of this instrument. Objector exercised his authority to nominate Pat Dicken of Dicken & Perine to serve as trustee. Objector believes that the bulk of the Loeffler's assets are held in the Trust. To the extent there are non-trust assets, Objector proposes Ms. Dicken be appointed the temporary conservator of the estate in order to marshal any such assets and deliver them to herself, as trustee of the Trust, thereby rendering the need for a permanent conservatorship of the estate moot.
 - g. Conservatorship of the Person is not the least restrictive alternative: Proposed conservatee executed an Advanced Health Care Directive ("AHCD") prepared by attorney Melvin Rube. Mr. Rube anticipated a challenge to the validity of the AHCD and had the proposed conservatee meet with Gary Motsenbocker, whose experience in the trust and estates field is extensive and reputation is exceptional, to interview the proposed conservatee. Both Mr. Rube and Mr. Motsenbocker were satisfied that the proposed conservatee had the requisite capacity to execute the AHCD. The AHCD nominates Objector to make healthcare decisions for the proposed conservatee. Therefore establishing a conservatorship of the person is not the least restrictive alternative and should be denied.
 - h. Should the Court determine that a conservatorship is necessary, proposed conservatee nominated Objector as her conservator of the person: Probate Code § 1810 provides that if, at the time of nominating a party, the proposed conservatee has sufficient capacity to form an intelligent preference, the court SHALL appoint the proposed conservatee's nominee, unless the court finds that the appointment is not in the best interest of the proposed conservatee. The proposed conservatee was interviewed by two attorneys who determined that the proposed conservatee had the capacity to execute the AHCD. The AHCD nominates Objector to serve as the attorney-in-fact to make health care decisions for the proposed conservatee. In the event conservatorship of the person of the proposed conservatee is deemed necessary, the AHCD nominates Objector. Therefore, a conservatorship of the person is unnecessary.

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- i. Petitioners fail to meet evidentiary standard: Probate Code § 1810(e) provides the standard of proof for the appointment of a conservator is **clear and convincing evidence**. The evidence before the court does not meet the clear and convincing standard and thus cannot support the appointment of a temporary conservatorship of the person or estate.
- j. Evidentiary objections: The court shall hear and determine the matter of the establishment of the conservatorship according to the law and procedure relating to the trial of civil actions. Probate Code § 1827.
 - (2) Evidentiary Objection: Declaration of Diana E. Asami in Support of Conservatorship of the Person of Fred Loeffler: Objector objects to the declaration of Diana E. Asami and the attachment thereto on the following grounds:
 - (d) It is inadmissible character evidence under Evidence Code § 1101 (a).
 - (e) It is irrelevant. Relationships between intimate partners and husband and wife differ from relationships with one's parents. Evidence Code § 350.
 - (f) Its probative value is slight compared by its prejudicial impact. Evidence Code § 352.