



ATTENTION

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

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

Thank you for your patience.

DOD: 11-27-05		<p>ANITA CHOPERENA, Mother and Administrator with Limited IAEA with bond of \$150,000.00.</p> <p>First Account period: 11-27-05 through 12-31-13 Accounting: \$ 2,274,542.15 Beginning POH: \$ 872,833.56 Ending POH: \$ 795,647.66 (Ending POH consists of \$4,852.34 cash plus real property, personal property, and various motor vehicles and equipment)</p> <p>Administrator requests payment of \$150,000.00 on her Creditor's Claim filed 6-20-06. (See Page C.)</p> <p>Receipt for Costs filed 3-4-14 indicates that Anita Choperena has paid herself \$34,363.62 for costs advanced detailed in Attachment A including farm land loan interest payments, former attorney retainer fee, irrigation expenses, etc.</p> <p>Petitioner states several loans were made to the estate by the Administrator totaling \$345,505.00, of which \$332,500.00 has been paid, and \$13,005.00 remains owing per Exhibit B.</p> <p>Petitioner requests this Court order:</p> <ol style="list-style-type: none"> 1. That the First Account and Report of Administrator be settled, allowed, and approved as filed; 2. All reported acts and proceedings of Petitioner as Administrator be confirmed and approved; 3. Petitioner be authorized and directed to Pay herself the total sum of \$150,000.00 plus accrued interest on the Creditor's Claim filed 6-20-06; and 4. For such further orders as the Court considers proper. 	<p>NEEDS/PROBLEMS/ COMMENTS:</p> <p>Page A: First Account and Report of Administrator</p> <p>Page B: Petition for Order to Continue to Operate Decedent's Business and to Borrow Funds under Probate Code §§ 9760 and 9800</p> <p>Page C: Allowance or Rejection of Creditor's Claim</p> <p>Minute Order 11-5-14: The Court orders that Petitioner is not allowed to sell the property without Court approval. Mr. Keene is to file a verified declaration regarding the farm income by November 26.</p> <p>Note: As of 11-20-14, nothing further has been filed.</p> <p style="text-align: center;"><u>SEE ADDITIONAL PAGES</u></p>	
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		<p>Reviewed by: skc</p> <p>Reviewed on: 11-20-14</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 4A – Choperena</p>		

NEEDS/PROBLEMS/COMMENTS (CONTINUED):

The following issues remain noted:

1. **Petitioner was appointed as Administrator with Limited authority under IAEA over eight (8) years ago on 2-24-06.** There was no mention in the original petition for probate of the real property in Merced County or the decedent's apparent farming business. The only assets originally alleged were income of \$38,000 annually (source not indicated) and proceeds from the foreclosure of certain residential real property in Fresno. Bond appears to have been based on this estimate.

At no time did the Administrator petition the Court for authorization to continue operation of the Decedent's business under Probate Code §9760 or to borrow, loan, etc., under Probate Code §9800.

Need clarification as to how these acts and transactions of the Administrator were to the advantage of the estate in the best interest of the minor heirs.

Note: There is no schedule showing net income/loss pursuant to Probate Code §1062(c); however, the estate/business appears to be operating at a loss, as the overall Disbursements exceeded Receipts, including loans, by approx. \$77,185.90, although according to the Reappraisal, the value of the real property itself has increased some. However, Examiner also notes that there is a negative balance of cash noted in the Ending POH of -\$4,852.34.

Update: Petitioner has now filed a Petition for Order to Continue to Operate Decedent's Business and to Borrow Funds under Probate Code Sections 9760 and 9800. See Page B.

2. **The Administrator had a duty to apply for increased bond upon knowledge of the bond's insufficiency pursuant to Cal. Rules of Court 7.204.**

It appears from this accounting that the annual income of the estate (business?) was approx. \$132,000.00, not including the loans from the Administrator. Therefore, together with the cash and personal property assets as inventoried, bond should have been increased to at least \$224,833.56 as early as the Administrator was aware. At this time, based on the approx. annual income plus the POH, bond should be increased to at least \$152,647.66.

Update: Order to Increase Bond to \$150,000.00 was signed ex parte on 4-9-14. Additional bond was filed 5-6-14.

SEE ADDITIONAL PAGES

NEEDS/PROBLEMS/COMMENTS (CONTINUED):

3. **Petitioner requests approval of payment of her Creditor's Claim filed 6-26-06 for \$150,000.00 plus accrued interest based on "Deed of Trust, Recorded on October 4, 1999."** However, there is no explanation regarding this transaction, including whether any payment schedule existed or payments were made prior to the decedent's death in 2005. Also, it appears interest has now been accruing for many years. Is there a reason the Administrator did not request allowance via proper channel previously (i.e., Allowance or Rejection form)? What is the current balance owing, and how was letting the interest accrue in the best interest of the estate and minor heirs?

Update: Petitioner has now submitted the Allowance or Rejection of Creditor's Claim Form DE-174 to the Court for consideration. Pursuant to Order dated 4-11-14, the matter will be set for hearing and considered along with this petition. See Page C.

4. Petitioner indicates that the Administrator has advanced costs to the estate totaling \$34,363.62. It appears that most of the "costs" listed appear to be business expenses, such as payment of wages and for machines, etc. Need clarification as to how these items are categorized as "costs" whereas it is known that the Administrator was also making "loans" to the estate for business purposes.

Update: See below re Declaration filed 4-9-14.

5. Petitioner's "costs" also includes payment of her former attorney Brian T. Austin's retainer in the amount of \$1,500.00. Please note that compensation has not been authorized to the attorney, nor is such authorization requested at this time.

Update: Declaration states the attorney was paid \$1,500.00 for costs incurred, rather than as a "retainer" or as an attorney's fee. Petitioner is informed and believes that there is a balance owing the estate for the unused portion of these funds of \$652.00.

6. This petition is filed as a "First Account;" however, it is far overdue and also does not indicate when the estate will be in a condition to close or request estimated additional time for administration.

Need verified declaration as to the condition of the estate, the reasons why the estate cannot be distributed and closed, and an estimate of the time needed to close the estate pursuant to Probate Code §12201.

Update: See below re Declaration filed 4-9-14 and Declaration filed 10-28-14.

Based on the above issues, the Court may strike any language confirming and approving the acts and transactions during the account period.

SEE ADDITIONAL PAGES

Page 4**Declaration filed 4-9-14 states:**

The principal asset of the estate is agricultural real property which is planted in almond trees. Since becoming Administrator, Petitioner has continued the decedent's business of growing and selling almonds. Initially, the debts of the estate exceeded the value of the assets, including the \$150,000.00 debt owed to Petitioner since before her son's death, and including the paper loss (mentioned above) in the amount of \$4,852.35. However, the last payment for the 2013 crop has come in that more than makes up for that amount.

Petitioner states there is also a lien against the amount payable for attorney's fees of \$2,073.28, but it is Petitioner's understanding that this does not reduce the value of the estate but is an issue to be worked out between Petitioner's current attorney and former attorney.

Regarding the \$150,000.00 promissory note owed to Petitioner: It bears an interest rate at 7% per annum. Petitioner has not been paying herself on this loan nor has she been paid any principal. The other loans she made to the estate for the farming operation have been interest-free even though this particular loan does bear interest. A copy of the note and deed of trust is attached to the Allowance or Rejection of Creditor's Claim filed herewith. (See Page C.)

Petitioner states the estate cannot be closed at this time because there is not enough cash in the estate to pay costs necessary to keep the almond trees productive and pay costs of administering the estate, including attorney's fees. Petitioner has listed the property for sale based upon the value determined in the Reappraisal for Sale; however, the value has been discounted by 20% based on this year's water shortage. Because of this discount, Petitioner is reluctant to let the property go for too small of an amount simply because prices are currently depressed. Petitioner would like to hold the asking price a little while longer to obtain the best price the market has to offer.

It is Petitioner's belief that it is in the best interest of the estate and in the best interest of her grandchildren, who are the heirs, that the court allow Petitioner to continue to operate the almond business with the assets of the estate until the property is sold.

Petitioner states she has, during the course of the administration, loaned money to the estate for the farming operation in order to fund cash flow. As Administrator, Petitioner would like the authority to loan and borrow funds if necessary, to continue to operate the business. It is anticipated that she would be the lender and the term of the loan would be until either the property is sold or the crop is harvested and sold, whichever comes first, as has been the case with all the loans made to the estate. The loan(s) would not have interest.

Declaration filed 10-28-14 states: The principal asset of this estate is real property planted with almond trees. Petitioner listed the property for sale on 4-7-14 at \$1,500,000.00. When there had been no active interest by anyone, she cancelled the listing. Since the original listing wouldn't expire until 10-31-14, she was afraid that if she actively marketed the property or listed it with anyone else, the first listing agent would still get a portion of the sale price. On or about 10-16-14, she called her attorney, who, after listening to her predicament, advised her to list the property with another realtor right away. On 10-16-14, she listed the property for \$2,400,000.00. However, the attorney told her that the price should have been the reappraisal price of \$1,095,000.00. At present, almost all costs for the 2014 crop have been paid using the first one half of the payment made when the almonds were purchased. The remaining outstanding bills are listed in Exhibit E. The second half of the proceeds from the sale of the 2014 crop is due mid-January in the amount of \$103,334.01. This will leave a balance which should be adequate to pay the cost of closing the estate; however, it may not be enough to also pay off the \$150,000.00 that Petitioner made to her son before his death.

Petitioner states if the real property is distributed in kind, the period immediately after mid-January would be the best time of the year for the almond production. However, Petitioner believes it is in the best interest of the estate to sell the property rather than distribute in kind to her grandchildren.

Therefore, Petitioner would like the Court to give her more time to sell the property.

DOD: 11-27-05		<p>ANITA CHOPERENA, Administrator with Limited IAEA with bond of \$106,000.00, is Petitioner.</p> <p>Petitioner requests an order authorizing her to continue to operate the decedent's business of growing almonds and selling them. The Administrator has been operating the business with some success over seven years. The estate is not in a condition to close because it does not have enough cash to pay the costs of administration. Therefore, the real property must be sold. If left unattended until it is sold, the almond trees may die from lack of water or become stressed and unproductive.</p> <p>It is therefore in the best interest of the estate and the heirs that the Administrator be allowed to continue to operate the business while she goes through the process of selling the real property.</p> <p>In order to fund the cash flow of the almond growing business, the Administrator has been making interest-free loans to the estate. It is anticipated that this practice will need to continue in order to continue with the business. §9800(a)(3) provides that if the court determines that it would be advantageous to the estate it may make an order allowing the personal representative to borrow against the estate for purposes of preserving the property of the estate. The Administrator believes that such borrowing is necessary in order to keep the almond trees on the property alive and productive.</p> <p>Wherefore, the Administrator asks for an order allowing her to continue to operate the decedent's almond growing business and allowing her to borrow money in order to carry on the business.</p>	<p>NEEDS/PROBLEMS/ COMMENTS:</p> <p>Minute Order 11-5-14: The Court orders that Petitioner is not allowed to sell the property without Court approval. Mr. Keene is to file a verified declaration regarding the farm income by November 26.</p> <p>Note: As of 11-20-14, nothing further has been filed.</p>	
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		<p>Reviewed by: skc</p> <p>Reviewed on: 11-20-14</p> <p>Updates:</p> <p>Recommendation: File 4B – Choperena</p>		

Allowance or Rejection of Creditor's Claim

DOD: 11-27-05		<p>ANITA CHOPERENA was appointed as Administrator on 2-21-06 with Limited IAEA and bond of \$106,000.00.</p> <p>On 6-26-06, Ms. Choperena filed a Creditor's Claim against the estate in the amount of \$150,000.00 with reference to a deed of trust recorded 10-4-99 (not attached).</p> <p>On 12-20-13, the Court reviewed the estate and, noting that there had been no activity since 2007, set the matter for status hearing. In response, the Administrator filed her First Account (Page 2A) in which she requested payment of her claim.</p> <p>The Administrator has now submitted for the Court's consideration the Allowance or Rejection of Creditor's Claim form DE-174 with copies of the Deed of Trust with Assignment of Rents as Additional Security recorded 10-4-99 and the Promissory Note dated 9-3-99.</p> <p>The Deed of Trust and Promissory Note indicate that in 1999, prior to the decedent's death, Ms. Choperena loaned the decedent \$150,000.00 at 7% per annum, payable in annual installments of "\$10,000.00 or more, plus interest." The loan was secured by the decedent's agricultural real property in Merced County.</p> <p>Ms. Choperena states in her Declaration filed 4-9-14 that she has not been paying herself any interest on this loan nor has she been paid any of the principal.</p> <p>Therefore, the Administrator requests that the Court allow her creditor's claim.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Minute Order 11-5-14: The Court orders that Petitioner is not allowed to sell the property without Court approval. Mr. Keene is to file a verified declaration regarding the farm income by November 26.</p> <p>Note: As of 11-20-14, nothing further has been filed.</p>
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		<p>Reviewed by: skc</p> <p>Reviewed on: 11-20-14</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 4B – Choperena</p>	

(1) First and Final Account and Report of Conservator; (2) Petition for Allowance of Compensation to Conservator and his Attorney; (3) and Distribution

DOD: 5-15-14	PUBLIC GUARDIAN , Conservator, is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
	Account period: 10-9-13 through 5-15-14	Minute Order 10-21-14: Counsel advises the Court that a petition for attorney's fees was filed by Attorney Edward L. Fanucchi.
	Accounting: \$115,581.70	
	Beginning POH: \$ 3,495.00	
	Ending POH: \$ 82,823.72	
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	Account period: 5-16-14 through 7-11-14	Note: Petition for Payment of Attorney's Fees for Court Appointed Counsel filed 10-17-14 by Edward L. Fanucchi is Page B.
	Accounting: \$82,827.23	
	Beginning POH: \$82,823.72	
	Ending POH: \$77,547.23 (cash)	
	Conservator: \$1,687.44 (for 11.64 Deputy hours @ \$96/hr plus 7.50 Staff hours @ \$76/hr, per declaration, including estimated time for management of finances, preparation of income tax returns, preparing statement of services, and making final distribution, pursuant to attached declaration)	Note: If the proposed distribution is affected by Mr. Fanucchi's petition, further notice to Medi-Cal may be required, and a revised proposed order may be necessary.
	Attorney: \$2,000.00 (less than allowed under Local Rule 7.16.B.1, since the Public Guardian did not have to file the paperwork to establish the conservatorship.)	
	Bond fee: \$145.44	
	Costs: \$539.00 (\$104.00 for certified Letters plus \$435.00 filing fee for this petition)	
	Petitioner states the Conservatee died testate on 5-15-14. Her will was deposited by the Public Guardian on 8-14-14 (Exhibit E) and heirs are listed in the petition. However, the Conservatee received Medi-Cal benefits before she died and Notice of the Conservatee's death was sent to Medi-Cal on 5-16-14. They sent a claim for \$191,000.00.	Reviewed by: skc
	After payment of the allowed commissions, fees and costs totaling \$4,371.88, Petitioner requests distribution of the remaining estate of \$73,175.35 to Medi-Cal.	Reviewed on: 10-16-14
		Updates:
		Recommendation:
		File 8A – Lyster