

Superior Court of California County of Yuba

Probate Notes for December 7, 2009

The Probate Calendar will be called at 9:00 a.m. in Department Two, the Hon. Debra L. Givens presiding.

The probate notes represent staff's recommendations to the Court, and are not tentative rulings. If the probate notes indicate that a petition should be granted, no appearance is required at the hearing. The matter will be deemed submitted on the papers. If the Court does not follow staff recommendation, appropriate instructions will be issued.

Frequently, the only defect in a probate petition is the absence of the Proof of Publication. In such instances, if the Proof of Publication is filed by 12:00 p.m. on the Friday before the hearing, the recommendation will be deemed to have been changed to a recommendation that the petition be granted.

If the moving party would like to continue the matter to cure defects showing in the probate notes, he or she may do so by sending an email to probate@yubacourts.org no later than 12:00 p.m. the Friday before the hearing. The email is to state the case name and number, and indicate a Monday date to which the continuance is requested. If such an email request is timely made, no appearance is required at the hearing, and the matter will be continued unless the probate notes indicate that the Court has directed otherwise.

Name: Estate of Negrete CVPB 06-167

Proceedings: Probate Review

Discussion: Counsel advises that the parents of the former Administrator have agreed to reimburse the estate for funds improperly disbursed from the estate by offset of their intestate shares. Further, additional time is required, given the state of the estate finances. The Administrator believes that he can have his final petition on file within 60 days.

Recommendation: It is recommended that the matter be set for hearing on the final petition on February 22, 2010, at 9:00 a.m. in Department Two.

Name: Estate of Alexakhin CVPB 09-89

Proceedings: Petition for Probate

Discussion: The nominated co-executor petitioned for letters and averred that the other nominated co-executor was unavailable. Counsel filed a declaration on November 16, 2009, stating that both co-executors are now available and prepared to serve. An amended Notice of Hearing was filed on November 16, 2009, with proof of service. The amended notice recites the foregoing facts.

The petition is not in order. Both the amended notice and counsel's declaration make reference to the filing of an amendment. Whether denominated as an amendment or a joinder, in staff's view, a separate document must be filed and verified in order for the new petitioner to become a party to the verified petition. No amendment or joinder appears in the file.

There is no proof of publication. There is an executed Duties & Liabilities by Kathleen Adams, but not by Gillian Bessant.

Recommendation: If a proper amendment or joinder by Gillian Bessant, executed Duties & Liabilities and Proof of Publication, the petition may be granted. There is no proposed order or executed letters in the file.

Name: Estate of Dahlman CVPB 09-102

Proceedings: Petition for Probate

Discussion: The spouse, son, and daughter of the decedent petition for their letters.

The petition is not in order. The will of the decedent, paragraph eight, nominates "...the natural person being Trustees in the DAHLMAN MARITAL TRUST at the time following my death..." There is no recitation in the petition that these petitioners are the persons so identified.

Moreover, Pr.C. §8002 requires a recitation of the character and estimated value of the property to be probated. Para. 3c of the petition states "0" as the value of the property. In staff's view, failure to recite that property to be probated has any value demonstrates that there is no *res* upon which the Probate Court may exercise its jurisdiction.

There is no Proof of Publication in the file.

The proposed order is not in order in that Marie Dahlman is a petitioner herein, but not named among the proposed appointees in para. 3 of the proposed order.

Recommendation: It is recommended that, at the election of the petitioners, the petition be denied without prejudice, or the hearing continued for the filing of an amended petition.