

Superior Court of California County of Yuba

Probate Notes for January 11, 2010

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 Clapp CVPB 08-20

Proceedings: Petition for Distribution on Waiver of Account, Fees, etc.

Discussion: The heirs waive the account, and the Executor presents his final petition. The petition is in order. Attorneys fees and the commission are properly calculated at \$10,301.24. The commission is waived. Costs of \$45.74 are in order. The notice is in order.

Recommendation: It is recommended that the petition be granted. The proposed order is in the file, and is in order.

Name: In re: Enriquez' Trust CVPB 09-10

Proceedings: Review

Discussion: Per the Court, counsel are instructed to appear.

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Name: Estate of Burke CVPB 09-27

Proceedings: Continued Petition for Letters of Administration

Discussion: The Probate Notes for the prior hearing of September 28, 2009 were as follows:

At the hearing of May 18, 2009, the Court adopted the defects in the petition per the Probate Notes for that date:

1. *A portion of the text of what purports to be the decedent's Will is not copied. Counsel should be directed to produce the original.*
2. *Given anomalies in the text of the purported Will, the Court should instruct that the subscribing witnesses submit declarations describing with particularity the circumstances under which the decedent allegedly executed the Will.*
3. *Paragraph 3(2)(a) is not in order. It would appear that the figure therein recited might properly be recited either in line 4 or line 6.*
4. *Paragraph 3(f)(1)(d) and related declination are not in order. The nominated executor should be required to submit a declaration as to the basis for his implied assertion that he is the "Jerry" referred to in the purported Will.*
5. *Paragraph 8 is not in order, because persons named in the purported Will are not listed.*
6. *The notice is not in order in that persons named in the Will are not noticed of the hearing.*
7. *The Proof of Publication is not in the file.*
8. *On May 11, 2009, Chase Bank by Phillips & Cohen Assoc. filed a creditor's claim. The claim is irregular in that it was not served on the personal representative; rather, the court is named in the proof of service. Staff recommends that the Court issue an OSC as to why the claim should not be stricken for lack of service. The claimant, however, should be advised that, while non-attorneys can execute and file the claim, Pr.C. §9151, generally only attorneys may make other filings, or appear in Court on behalf of a corporate entity. Merco Constr. Engineers, Inc. v. Municipal Court (1978) 21 C.3d 724.*

Items 1,4 and 6 remain not in order.

As to No. 6, decedent's granddaughter and three sisters, named in the will, are now listed in para. 8 of the amended petition. While their respective city of residence of residence is listed, the address is stated as unknown, and they are not listed on the proof of service.

Recommendation: It is recommended that the hearing be continued to January 11, 2010 at 9:00 a.m. in Department 2, with instructions to lodge the original will, submit the declaration re: the nominated executor, and to serve all beneficiaries, or seek appropriate relief relating to service based on a proper showing of diligence

Per the minutes from September 28, the Court essentially adopted the recommendation of the Probate Notes.

The petition remains not in order, as follows:

1. The declination is still not in order – see item 4, supra. Debra L. Brooks filed a declaration purporting to identify Jerry Sanders as the “Jerry” nominated as executor in the will of the decedent. However, as noted in the Probate Notes and the minutes, the purported declination by Mr. Sanders must be in writing, signed by him. Also, Mr. Sanders is entitled to notice, and does not appear on the proof of service.
2. The original will has not been lodged.
3. No supplemental proof of service indicating service on the persons whose addresses were stated as “unknown” has been filed. Alternatively, no application for relief from service requirements has been made.
4. The respective *Proof of Holographic Instrument* executed by the purported witnesses are likewise not in order. The instrument filed by Brian Buchannan appears, in para. 3a, to be factually false in that it states that the witness saw the decedent write the will, whereas the instrument filed by Debra Brooks averred that she, not the decedent, wrote the will. The *Proof of Holographic Instrument* should not have been used at all, because the instrument in question does not appear to have been a hologram. Rather, the proper form would have been *Proof of Subscribing Witness*, Judicial Council form DE-131.

Recommendation: It is recommended that the petition be denied without prejudice.

Name: Estate of Dahlman CVPB 09-102

Proceedings: Continued Petition for Probate

Discussion: The Probate Notes for December 7, 2009 were as follows:

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.

The petition remains not in order.

On December 3, 1 2009, Marie Dahlman filed a declaration clarifying the defect as to the identity of the nominated executors. However. Ms. Dahlman’s declaration, para. 5, p. 2, reinforces the view that there may not be any assets subject to administration. Staff’s

position remains unchanged, namely that if no value is stated in para. 3 of the form petition, the petition fails to state any basis for the Probate Court to exercise its jurisdiction.

The petition was not amended as the Court instructed per the minutes, nor was a revised order submitted.

Recommendation: It is recommended that the petition be denied without prejudice.

Name: Estate of Rizzo CVPB 09-110

Proceedings: Spousal Property Petition

Discussion: Decedent's wife presents her Spousal Property Petition.

The Petition is not in order. Among the assets of the decedent is a one-third interest in a certain parcel and mobilehome, described in the petition. The property was subject to a Petition to Determine Succession to Real Property in Case No. CVPB 0980, granted by the Court on September 17, 2009.

The aforementioned proceedings were irregular in that, unbeknown to the Court, the decedent died before the petition was adjudicated.

The notice is not in order in that the decedent's co-tenants in common in the aforementioned property were not noticed of these proceedings: Pr.C. §850(a)(2).

Recommendation: It is recommended that the hearing be continued to March 1, 2010, at 9:00 a.m. in Department Two, the Petitioner to be instructed to properly serve the petition, file amended proof of service, and also file declaration(s) explaining why the Court was not notified prior to the hearing in 09-80 that one of the petitioners therein was deceased.