

Superior Court of California County of Yuba

Probate Notes for January 19, 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 Billings CVPB 06-141

Proceedings: Petition to Reopen Estate, etc.

Discussion: At the hearing of December 15, 2009, the Court essentially adopted the Probate Notes for that date.

The deficiencies identified in the Probate Notes related primarily to the lack of execution by the Administrator and lack of service on an individual who has filed a Request for Special Notice.

The Amended Petition and its proof of service remedies these deficiencies.

Recommendation: It is recommended that the petition be granted. There is no proposed order in the file.

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Name: Estate of Shintaffer CVPB 08-49

In re Shintaffer's Trust CVPB 09-49

Proceedings: (In each matter) Motion to Compel Further Response to Demand for Inspection, etc./ Sanctions

Discussion: In each case beneficiaries seek to compel further responses to Request for Production of Documents which were propounded upon the co-Executors in 08-49, and the co-trustees in 09-49.

The moving papers are somewhat confusing as to the relief sought. For example, the use of the expression "Category of Withheld and Denied Documents" (Notice of Motion in 09-41, 2:17) could be read to suggest that the written response to the Request for Production agreed to produce materials, but that such were "withheld." Numerous other phrases throughout the moving papers could be interpreted in the same way.

However, the scope of relief is delimited by the Notice of Motion. In the caption in the respective Notices the purported statutory bases for the motion is recited, and the moving parties refer to Code of Civil Procedure §2031.310 which governs the inadequacy of the written response, the making of a representation of inability to comply that is inadequate, incomplete, or evasive, or the interposition of objections that are without merit. The statute is to be contrasted with C.C.P. §2031.320, which pertains when the responding party agrees to permit inspection, but thereafter fails to produce the materials to be inspected.

There are two salient bases for the opposition: First, that the motion is untimely. Second, and generally speaking, that the Requests for Production were propounded on the responding parties in their respective representative capacities, and that many of the documents were requested are not in the possession or custody or under the control of the responding parties in their representative capacities.

While Staff agrees broadly with the responding parties' argument as to the manner of the propounding of the Requests, the motions are untimely, and the untimeliness is dispositive.

The time for the filing of the motion is governed by the date that the written response is served. *Standon v. Superior Court* (1990) 225 Cal.App.3d 898,902-903. While the Discovery Act has been significantly revised since 1990, the language referenced in *Standon* is still tracked in the language of present C.C.P. 2031.310(c).

The "45+5" time limit is mandatory and jurisdictional. *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403,1410.

Recommendation: It is recommended that each motion be denied as untimely.

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Name: In re Light's Trust CVPB 08-64

Proceedings: Continued Review

Discussion: At counsel's request, this matter was continued from November 2, 2009 based on the need to "...finalize a settlement agreement." As a courtesy to counsel the Court granted the request notwithstanding that the Court is not aware what issues remaining that might need to be subject to negotiation and settlement. No further communication appears in the file.

Per the Court, counsel are directed to attend the hearing and advise the Court on the foregoing matters.

Name: Estate of Barnett CVPB 09-93

Proceedings: Continued Petition for Issuance of Citation, etc.

Discussion: At the hearing of December 28, 2009, the Court ordered Nina Singh to return to court this date unless Mr. Islip indicates he is satisfied with the production. As to Mr. Ownbey and Ms. Ownbey, the matter was continued as Mr. Islip indicated that they are represented by Mr. Fruitman, who was unavailable.