

# Superior Court of California County of Yuba

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## Probate Notes for February 1, 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](mailto: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.

In some instances Staff recommends that the Court instruct that a party file a petition, e.g., a petition for distribution, for hearing on a certain date. A date certain is recommended for tracking purposes, and is not meant to prejudice the ability to bring a petition on an earlier date. Subject to ordinary filing and service requirements, and unless specifically instructed otherwise, a party may set the matter for hearing on or before the specified date.

**Name: Estate of Billings CVPB 06-141**

**Proceedings: Continued Petition to Reopen the Estate, etc.**

**Discussion:** At the hearing of January 19, 2010 the Court instructed Sheryl Lea Welch to submit her objections in writing on or before January 26.

The Objector failed to timely comply she her filed her objection on January 27. The document was filed "on demand" because it is not in pleading format, and does not have a proof of service. The document is not verified. The general thrust of the objection is that the Administrator breached an agreement to convey the estate realty to her. In staff's view this is not a sufficient ground for objection.

**Recommendation:** It is recommended that the objection be stricken for lack of a proof of service, or that the Court refuse to consider it, as it is untimely. Even if the Court were inclined to waive these irregularities, Staff would recommend that the objection be overruled as the unverified instrument is no proof of the statements contained therein. Even if the document were properly verified, the objection lacks merit as a basis for denial of the petition, and should be denied on the merits.

It is recommended that the Petition to Reopen, etc. be granted.