

Superior Court of California County of Yuba

Probate Notes for August 22, 2011

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.

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 Moser CVPB 08-52

Proceedings: Continued Probate Review

Discussion: This is the tenth setting on the probate review. The Court has been previously advised of the difficulty in disposing of the estate realty. Accordingly, at the second setting on January 5, 2010, the Court ordered that the personal representative formulate a plan to close the estate notwithstanding the difficulties relating to the realty.

Recommendation: It is recommended that a hearing on the final petition be set for October 3, 2011 at 9:00 a.m. in Department Two, the Court to consider revocation of the letters and dismissal of the action if its instructions are not followed.

Name: Estate of Walters CVPB 11-08

Proceedings: First and Final Report on Waiver of Account, etc.

Discussion: The Executor/ co-beneficiary waives the account and makes his final petition. The waivers are not in order in that the other beneficiary, Danny Ray Walters, has not waived the account.

The petition is not in order in that p. 4 of the petition recites that expenses were incurred in the Sutter County Superior Court relating in some way to attorneys fees. Staff does not understand the reference.

The petition is otherwise in order. Attorneys fees are properly calculated at \$15,681.53. The commission is waived. Notice is in order.

Recommendation: If a further waiver and documentation regarding the referenced expenses are provided satisfactory to the court, the petition may be granted. Under such circumstances the proposed order would be in order.

Name: Estate of Kelley CVPB 11-47

Proceedings: Continued Petition for Probate

Discussion: The Probate Notes for the original hearing of June 13, 2011 stated:

The petition is not in order. It alleges, at para. 3(f)(1)(d) that the nominated executor "...is in Costa Rica at the moment and not available to serve... In staff view, this recitation is insufficient. The "declination" box is checked, but there is no evidence that the nominated Executor, James Winks, has declined. There is insufficient recitation of how long Mr. Winks will be outside the United States. It is noted that Mr. Winks' address for notice is in Oregon House, Yuba County, which also raises the issue of the sufficiency of notice upon him.

The petition is otherwise in order. Notice is in order except as noted. The executed Duties & Liabilities is in the file.

Recommendation: The petitioner should be given the opportunity to file a declaration supplementing the petition. If the Court is satisfied, the petition may be granted. There is no proposed order or executed letters in the file.

No declaration was filed in advance of the continued hearing date of July 18, The Court continued the hearing to this date. As of August 15 no declaration appears in the file. **The original Probate Notes contain an error in that they fail to note there is no proof of publication for the original hearing in the file.**

Recommendation: The recommendation remains unchanged, except that a proof of publication must be provided. If no declaration is provided, it is recommended that the petition be denied without prejudice.

////

Name: Estate of Weddle CVPB 11-50

Proceedings: Continued Petition to Determine Succession to Real Property

Discussion: The Probate Notes for the hearing of June 27, 2011 stated that the petition was in order except that the other two beneficiaries of the decedent's will must either be joined as parties petitioner, or must file disclaimers, and the Court ordered accordingly. Now the other beneficiaries have filed disclaimers.

Recommendation: The petition should be granted. The proposed order is in the file and is in order, except that the name of Jennie Weddle should be stricken from the caption, and para 1 must be filled out.