

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 2, Honorable Lori E. Pegg, Presiding
Audrey Nakamoto, Courtroom Clerk

191 North First Street, San Jose, CA 95113
Telephone 408-882-2120

**ADVANCE CASE STATUS REPORT (“ACSR”)
(Local Probate Rule 1)**

GENERAL PROBATE CONTINUANCE CALENDAR – Dept. 2

DATE: Thursday, September 26, 2024

TIME: 9:02am

*****NOTICE*****

**APPEARANCES MAY BE IN PERSON OR REMOTE THROUGH
MICROSOFT TEAMS**

**To find the appropriate remote appearance links please go to:
<https://santaclara.courts.ca.gov/online-services/remote-hearings>**

**“PREAPPROVED” matters are those reviewed and found satisfactory.
Personal appearance by the petitioning party is not required. Pre-
approved matters to which objections are made may be continued.
Orders for preapproved matters will be signed upon calling of the
calendar and may be picked up for filing at that time.**

**“PROBATE EXAMINER NOTES” - If a matter is not preapproved,
then the Probate Examiner will list procedural defects. Parties may file
additional documents to correct procedural deficiencies, and the Court,
in its discretion, may consider such filings in making its order. The
Court may order a matter off calendar, grant it subject to additional
filings, or order a continuance.**

TROUBLESHOOTING

If you do not see the appropriate calendar’s ACSR, then it has either not been posted yet or your web browser cache (temporary internet files) is accessing a prior calendar. “REFRESH” or “QUIT” your browser and reopen it, or adjust your internet settings to see only the current version of the web page. Your browser may access old information from old cookies even after the current calendar has been posted.

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LINE #	CASE #	CASE TITLE	ACSR/Examiner notes
LINE 1	16PR178534	<i>Conservatorship of Eduardo Arturo Vergara</i>	Click line #1 or scroll below to line #1 for probate examiner notes.
LINE 2			
LINE 3	23PR195237	<i>Estate of Janet Mary Rodat</i>	Click line #3 or scroll below to line #3 for probate examiner notes.
LINE 4	16PR178534	<i>Conservatorship of Eduardo Arturo Vergara</i>	See line #1
LINE 5	24PR196752	<i>Margaret Mary Rose Trust</i>	Parties to appear for court's ruling.
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LINE 29			
LINE 30			

Calendar line 1

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16PR178534 Conservatorship of Eduardo Arturo Vergara

Continuance request by "Avery" on 3/25/24 request the 3/28/24 court date be continued to 9/26/24 to file a 3rd Amended 2nd Accounting. No 3rd Amended 2nd Accounting on file or pending in e-file.

Prior deficiencies on 2nd Amended 2nd Accounting

1. The accounting does not fully follow the content and format required in CRC Rule 7.575. See Local Probate Rule 9(A)(2). Assets are divided/categorized between "Business" and "Personal."
2. Order of 9/27/2016 gave CNR independent powers to close the conservatee's medical practice located at 2039 Forest Avenue, Suite 205, San Jose; sell the personal property associated with the medical practice; and sell the CNE's 50% interest in the real property at 2039 Forest Ave.
 - a. Sale of the R/P was completed for a loss on 7/24/2017. Probate C §2620(c)(3)-The filing shall include the original closing escrow statement received showing the charges and credits for sale of real property of the estate. PEX is unclear what personal property was associated with the medical practice as no such items are listed as assets of the CSP Estate.
 - b. Disbursement's schedule reflects 9/1/2017 "Yellow Pages, advertising" for \$497.80, in addition to other continuing expenses for bookkeeping, payroll, recordkeeping, janitorial, miscellaneous, etc. A short explanation in the petition seems helpful, i.e. business was sold but some wrap-up business expenses continued, etc.
 - c. Why do ending assets continue to be divided/categorized between business and personal? Aren't all assets in the name of the conservatorship? CRC Rule 7.1059(b)(7)
3. Current accounting includes schedule of "Additional Property Received" listing two items both dated 12/14/2017:
 - a. "Contribution from Conservatee from XExchange Solutions as part of a 1031 exchange to purchase San Fernando" - \$226,990.42
 - b. "Loan Funds from Stearn Lending for mortgage on San Fernando, as part of a 1031 exchange (Conservatee's share of loan proceeds is 50%; Conservatee's ownership share of property is 58%" - \$213,573.38
 - i. Schedule of Disbursements reflects \$7,500 paid to a Rodriguez Law for "retainer on Purchase of 1031 exchange for San Fernando Property." Probate C §1064(a)(3)
 - ii. PTN #4.V states "San Fernando property was transferred to the Trust August 31, 2018."
4. Schedule of Receipts
 - a. Disability benefits from "Paul Revere Life Insurance Co." and "Unum." Life insurance policies should be inventoried, correct? Probate C §8901(e)
 - b. 1487 Rosecrest Terrace, San Jose – No rental income for July or August, 2018? Also, when did CNE move back to this residence? Rental income stops in Dec, 2018.
 - c. 393 Berry Ave, Hayward – One 5/16/2017 rental receipt of \$10,159.87. Source/payor not listed. Why no rental income for any other months?
 - d. 130 E. San Fernando St – Rental income totaling \$11,357.89, but why does the CSP receive 50% when ownership is stated as a 58% interest? Why did rental income stop in Dec. 2018?
5. Schedule of Disbursements
 - a. 1487 Rosecrest Avenue, San Jose - 9/25/2017 Repairs and Maintenance \$2,500; Monthly Security Monitoring 4/26/2017 and 5/26/2017 - \$59.99. No payees listed. Prob. C §1062(b)
 - b. Subcategory "Conservatee Distributions" totaling \$7,000 - "Withdrawal on behalf of conservatee." Previous court order allowed a personal allowance? Prob. C §2421

- c. Subcategory “Gifts” for \$2,126.90 – “Purchase BMW.” Payee not listed. Prob. C §1062(b)
 - d. Subcategory “Miscellaneous” 12/5/2018 cash withdrawal - \$2000. By conservator? For what purpose? Prob. C §1064(a)(1)
 - e. Subcategories: Personal Living Expenses totaling \$5,264.24; Travel to/from Peru to visit Conservatee totaling \$7,162.12; Medical Expenses totaling \$11,436.42
6. PTN #14 – Bond is currently set at \$1,300,000.00 per Ex Parte Order of 7/12/2023, but PTR does not confirm that it is sufficient. PTR is posting one bond to cover both CSP and Trust assets purs Local Probate Rule 11(V), correct? Is the one bond sufficient? Local Probate Rule 9(A)(3): “Fiduciaries must allege in all reports accompanying accountings whether or not the bond in the case is sufficient under Probate Code §2320 and CRC 7.207, and, if not, what steps are being taken to comply with the law...”
 - a. The ex parte petition to reduce bond submitted 6/7/2023 states, in part: “The current value of the *conservatorship estate* is approximately \$1,293,000.00.” Market value of all personal property at end date of this accounting is 2,551,025.09?
7. No financial account statements found in the probate filing clerk’s office. Were they lodged? Prob. C §2620(c)(2).
8. PTR states he paid \$26,909.11 to Morrill Law and requests reimbursement from the CSP estate for these legal fees paid from his personal funds.
 - a. PTN #7.ii states, in part: “A detailed description of those services will be set forth in a declaration in support of reimbursement for attorney's fees already paid; the declaration will be filed shortly after the filing of this account.” No declaration on file. CRC Rule 7.751(b) and Local Probate Rule 9(F).
9. No proposed order submitted.

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23PR195237 Estate of Janet Mary Rodat

1. The document filed 9/11/2024 is entitled “*Declaration In Support of First and Final Account and Report of Executor and Petition For Its Settlement; For Allowance of Attorney’s Fees For Ordinary and Extraordinary Services; For Reimbursement of Costs Advanced; and For Final Distribution*”
 - a. It is being submitted to *supplement* the petition filed 4/25/2024. It includes a fully amended accounting. See definitions at CRC Rule 7.3.
Regardless, a POS of notice was also filed on 9/11/2024. It lists the pleading being noticed as the attorney’s declaration in support.

2. The 9/11/2024 “Declaration In Support...” at #7 states item #21 of the petition is supplemented, but the total of all listed costs (\$8,919.58) appears incorrect? Examiner calculates the total of all costs = \$8,886.33.
 - a. In addition, the proposed order findings #17 requests \$8,919.58, but lists the total of all itemized costs as \$8,843.48.

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16PR178534 Conservatorship of Eduardo Arturo Vergara

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24PR196752 Margaret Mary Rose Trust

Parties to appear for court's ruling.

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