

Recent Developments in Trust, Estate, and Conservatorship Law

A faint, monochromatic blue background image of a person, likely a personification of Justice, holding a pair of scales. The person is wearing a blindfold and a long, flowing robe. The scales are held high in their right hand, and the person's left hand is resting on their hip. The background is a gradient of blue, transitioning from a darker shade at the bottom to a lighter shade at the top.

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Introduction



Ciarán O'Sullivan

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Ciarán O'Sullivan has litigated the entire range of trusts, estates, and property disputes since he began his career in 1998 in the Bay Area office of the firm now known as Reed Smith. He has been a solo practitioner since 2010. He is a frequent presenter on many topics of interest to Trusts and Estates practitioners, and has published articles on litigation, trial, and appellate procedure in the Trusts and Estates context. He is a former chair of the Bar Association of San Francisco's Trusts and Estates Litigation section.



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Matt focuses his practice on trust, estate, and inheritance disputes. He has prosecuted and defended a wide range of matters in probate court, including trust contests, elder abuse actions, accountings, contested conservatorships and claims involving breach of fiduciary duty. His clients include high net worth individuals and families, corporate trustees, and private professional fiduciaries.

Agenda

1. New Legislation from 2023

- SB 801: California Uniform Directed Trust Act
- SB 235: Civil Discovery (Initial Disclosures)

2. New Cases from 2023

- Trust Cases
- Conservatorship Case
- Malpractice Case

3. Questions

Conservatorship Legislation

SB 280 (Laird): Review of Conservatorships; Care Plans

- Adds Section 2351.2 to the Probate Code
- Effective: January 1, 2025
- Requires a conservator to file a care plan
- Contents of plan:
 - Care, custody, and control of the conservatee
- Deadline to file:
 - Within 120 calendar days of appointment
 - No later than 10 days before a hearing to determine the continuation or termination of an existing conservatorship



SB 35 (Umberg): CARE Court Program

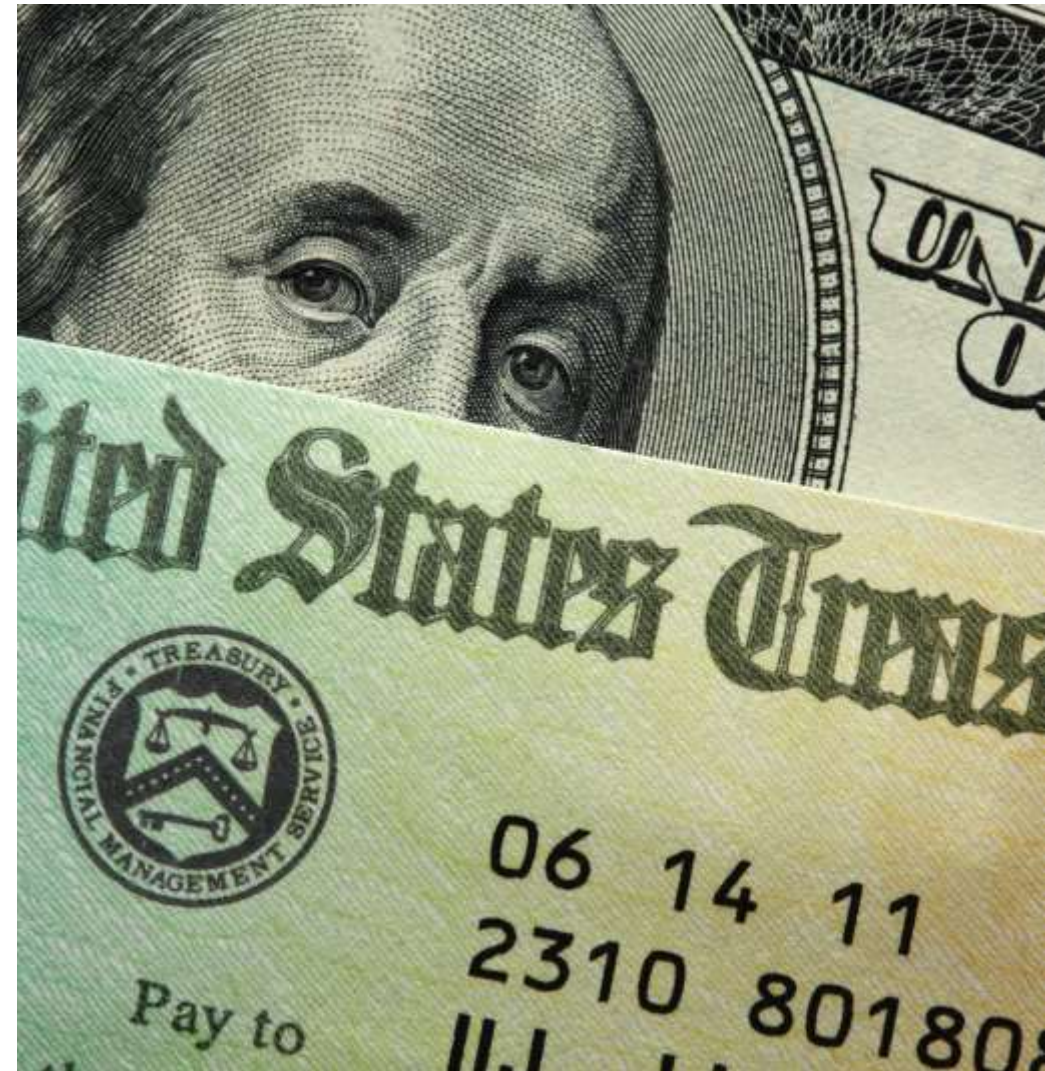
- CARE = Community Assistance, Recovery, and Empowerment
- CARE Act effective: October 31, 2023 (in select counties, including SD)
- SB 35 effective: January 1, 2024
- Amends many sections of the Welf. & Inst. Code and adds new ones
- Gives the original petitioner to the CARE process the right to be present and make a statement on the merits of the petition at the initial hearing
- Court may grant ongoing rights to the original petitioner who resides with the respondent or is otherwise closely connected to the respondent
- Makes it easier for respondent to seal records re the CARE proceeding
- Authorizes appointment of counsel for respondent (public defender)
- Exempts from the Public Records Act county behavioral health agency reports to determine eligibility for the CARE process

Trust Legislation

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SB 522: Uniform Fiduciary Income & Principal Act

- Repeals current rules on the topic in the Probate Code (16320 et seq)
- Replacement: Uniform Fiduciary Income and Principal Act (UFIPA)
- UFIPA applies when California is the principal place of administration of a trust or estate
- Brings California in line with other states



SB 131: Taxation of ING Trusts

- Under existing law, where the grantor or another person is treated as the owner of any portion of the trust, known as a “grantor trust,” then items of income, deductions, and credits against tax of the trust are included in computing the taxable income and credits of the grantor or other owner
- Section 17082 states that, for taxable years beginning on or after January 1, 2023, the income of an ING trust is included in the gross income of the grantor to the extent the income of the trust would be included for the purpose of computing the grantor’s taxable income if the trust were treated as a grantor trust, except where certain conditions are met



SB 801: California Uniform Directed Trust Act

- Amends Sections 300 and 1304, and adds Chapter 6 (commencing with Section 16600) to Part 4 of Division 9 of the Probate Code
- The CUDT provides a method for regulating trusts where a person who is not a trustee has been given a role in directing the trust
- Identifies duties and responsibilities of trust director and directed trustee
- Requires directed trustee to take reasonable action to comply with trust director's exercise or non-exercise of a power of direction, except when it would require trustee to engage in willful misconduct



Legislation Re Licensed Professional Fiduciaries

AB 1262: Professional Fiduciaries

- Bureau no longer required to make available to the public and publish on the internet the circumstances causing the licensee's removal or resignation from a fiduciary role
- Authorizes a licensee's canceled license to be reinstated if specified requirements are met, including fulfillment of all application requirements
- Authorizes a person whose license has been revoked, surrendered, suspended, or otherwise disciplined to petition the Bureau for reinstatement or reduction of penalty



Professional Fiduciary Practice Administrator

- New Probate Code sections 2469 (incapacity) and 9765 (death)
- Effective: January 1, 2024
- Authorizes the appointment of a professional fiduciary practice administrator to act as a temporary professional fiduciary when a professional fiduciary either becomes incapacitated or dies and a vacancy exists
- Petition for appointment is required with notice to all persons interested in the impacted matters



Miscellaneous Legislation

Corporate Transparency Act (CTA)

- Effective: January 1, 2024
- Enhances transparency in entity structures, including trusts
- Goal is to combat money laundering, tax fraud, and illicit activities
- Must file report to disclose entity ownership
- Beneficial owners must file (control of entity or 25% ownership)
- Report to include name, DOB, address, ID number, and photo of ID
- FinCEN: Financial Crimes Enforcement Network



AB 288: Revocable Transfer on Death Deeds

- Amends several Probate Code sections that authorize the transfer of real property by revocable transfer on death deed (RTODD) even if ownership is not typically evidenced or transferred by use of a deed
- Changes the recording requirements for RTODDs to specify that, if an RTODD and another instrument purporting to dispose of the same property conflict, if the other instrument is revocable, the later executed instrument is operative, and that the other instrument is operative if it is irrevocable

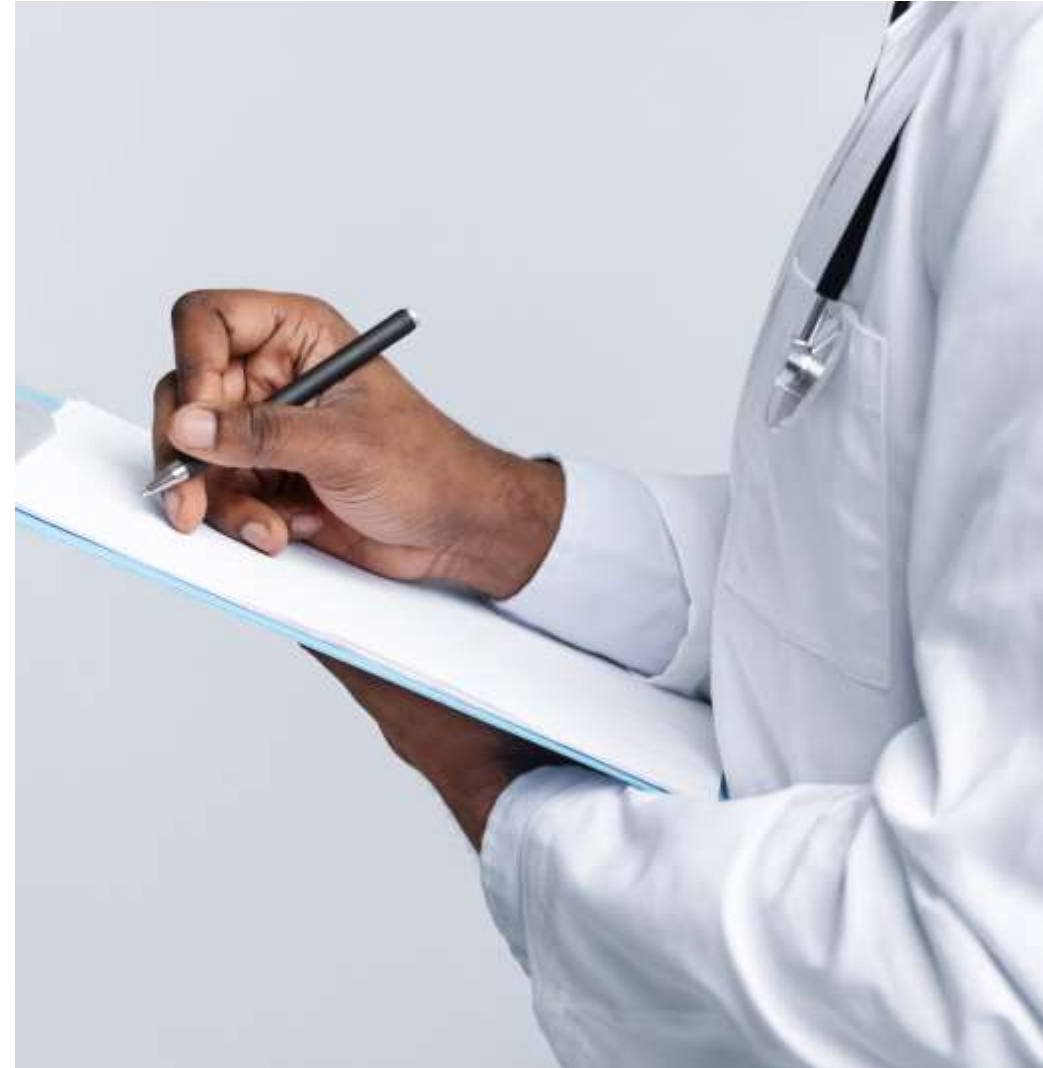


AB 1650: Custody, Parentage, and Adoption

- Amends Section 155 of the Code of Civil Procedure and Sections 7551, 7573.5, 7613, 8616.5, 8714, 8802, 8912, and 9000 of the Family Code
- Authorizes unmarried persons who share legal control over disposition of embryos created through assisted reproduction to enter into a written agreement where one person renounces all interest in the embryos, with the intent to not be a legal parent of any child conceived via the embryos
- Person who retains legal interest in and control over disposition of the embryos has sole right to determine their use and disposition, and the renouncing person is treated as a donor, and not a legal parent
- Authorizes either party to file the agreement with the court and requires the court to issue an order establishing the non-parentage of the donor

AB 1029: Advance Health Care Directive Form

- Amends PC sections 4617 and 4701 and adds PC section 4679
- Clarifies that the phrase “health care decision” in the portion of the statutory advance health care directive form that provides for the designated agent to make health care decisions, does not include consent by a patient’s agent, conservator, or surrogate to convulsive treatment, psychosurgery, sterilization, or abortion.
- Confirms that a voluntary standalone psychiatric advance directive may still be executed and clarifies in the statutory advance health care directive form that the individual’s agent may not consent to a mental health facility or consent to convulsive treatment, psychosurgery, sterilization, or abortion for the principal



AB 1268: Organ Donor Elections via FTB

- Adds Sections 18544 and 19572.5 to the Rev. and Tax. Code
- Requires the Franchise Tax Board to include a checkbox on resident income returns for purposes of allowing individuals to provide written consent for Donate Life California to enroll the individual in a specified organ and tissue donor registry
- Permits the Franchise Tax Board to share the individual's information



SB 890: Property Taxation: Change of Ownership

- Amends Sections 62.1, 62.5, 69.4, and 69.6 of the Revenue and Taxation Code
- Addresses change of ownership rules and transfer of base year values for property tax purposes
- Provides that if a transfer of a mobile-home park or floating home marina is excluded from a change of ownership pursuant to existing law but the park or floating home marina has not been converted to a condominium, stock cooperative ownership, or limited equity cooperative ownership, then any transfer of shares of the voting stock of the entity that acquired the park or floating home marina is a change in ownership of a pro rata portion of the real property of the park or floating home marina
- Authorizes the application of the qualified contaminated property base year value transfer provisions of existing law if the sale or transfer of the original property results in a base year value determined in accordance with the age, disability, and disaster base year value transfer because the property qualifies under that age, disability, and disaster base year value transfer
- Prohibits application of the qualified contaminated property base year value transfer provisions if the owner of the original property signs a claim under the intergenerational transfer exclusion allowing the base year value to stay with the original property

SB 235: Civil Discovery (Initial Disclosures)

- Amends Sections 2016.090 and 2023.050 of the Code of Civil Procedure
- Requires each party that has appeared in a civil action to provide initial disclosures to the other parties within 60 days of a demand by any party unless modified by the stipulation of the parties
- Exempts actions or proceedings commenced in whole or in part under the Probate Code (as well as the Family Code)
- Increases the amount of the sanction on a party, person, or attorney, from \$250 to \$1,000, upon findings that they (1) failed to respond in good faith to a document request, (2) produced the requested documents within 7 days of a motion to compel that is filed by the requesting party as a result of the other party, person, or attorney's failure to respond in good faith, or (3) failed to meet and confer in person, by telephone, by letter, or other means, to resolve any dispute regarding the request

SB 133: Remote Court Proceedings

- Amends Section 367.75 and adds Section 367.76 of the Code of Civil Procedure, and amends, repeals, and adds Sections of the Business and Professions Code, other Sections of the Code of Civil Procedure, and Sections of the Government Code, the Penal Code, and the Welfare and Institutions Code
- Extends from July 1, 2023, to January 1, 2026, the authorization for a party to appear remotely and a court to conduct conferences, hearings, proceedings, and trials in civil cases, in whole or in part, through the use of remote technology





Trust Cases

Diaz v. Zuniga (2023) 91 Cal.App.5th 916

- Trust could only be amended if notice was delivered to trustee via certified mail
- Settlor attempted to amend, but did not send document to himself as trustee via certified mail
- Probate court ruled amendment was invalid; statutory method of amendment not available because trust contained its own method
- Holding on appeal? **AFFIRMED**
- Adopted *Balistreri* view
- District split:
 - *Haggerty v. Thornton* (2021) 68 Cal.App.5th 1003 (4th DCA)
 - *Balistreri v. Balistreri* (2022) 75 Cal.App.5th 511 (1st DCA)



Haggerty v. Thornton (2024) 15 Cal.5th 729

- Trust gave settlor the “right by an acknowledged instrument in writing to revoke or amend”
- Trust amendment in question was not notarized/acknowledged
- Probate court and appellate court found the amendment valid
- Holding on review by California Supreme Court? **AFFIRMED**
- When the trust specifies a method of modification, both the specified method and the statutory method are available, unless:
 - 1 – the trust expressly makes the specified method exclusive, or
 - 2 – the trust expressly precludes use of the statutory method

Pool-O'Connor v. Guadarrama (2023) 90 Cal. App. 5th 1014

- Absent express authority under a power of attorney, an attorney-in-fact (AIF) may not create a survivorship interest in the principal's funds by depositing them into a joint account, of which the AIF is a joint owner
- Holding on appeal? **AFFIRMED**
- Guadarrama breached his fiduciary duties as attorney-in-fact by:
 - (1) creating a survivorship interest in funds deposited to the joint account where the POA did not expressly grant him such power
 - (2) claiming an ownership interest in the joint account funds because to do so amounted to an attempted change in the designation of beneficiaries who would have otherwise shared in the entitlement to the funds under principal's will and trust
- Guadarrama was properly surcharged for amounts he withdrew from the joint account in excess of \$14,000 (the federal annual exclusion amount)

Zahnleuter v. Mueller (2023) 88 Cal.App.5th 1294

- Successor trustee surcharged for attorney's fees paid from trust assets in defense of trust contest as to trust amendment
- Holding on appeal? **AFFIRMED**
- By defending the third amendment, trustee improperly pursued the interests of the beneficiaries under the third amendment over the interests of the beneficiaries under the earlier amendments
- Fact that trustee himself did not have a beneficial interest in the third amendment was irrelevant
- Key issue was that the trustee did not participate as a neutral party to defend the existence of the trust and its assets
- Trusts may include language permitting trustee to defend validity of an amendment, but this trust lacked such authorization and explicitly precluded the trustee from defending any amendment



Spears v. Spears (2023) 2023 Cal.App.LEXIS 973

- Son filed petition seeking to be named a creditor of his deceased father's trust, to remove step-mother as trustee, and for accounting
- Probate court dismissed the petition on the basis that he did not file an amended pleading after court sustained step-mother's demurrer to the petition with leave to amend
- Holding on appeal? **REVERSED**
- Although son did not file an amended petition following the ruling on the demurrer, he did file a creditor's claim
- Probate court should have construed the creditor's claim as the son's amended petition



Starr v. Ashbrook (2023) 87 Cal.App.5th 999

- Beneficiary filed surcharge petition alleging trustee misused trust assets by pursuing meritless petition and using trust assets to fund elder abuse litigation against beneficiary and his brothers
- Trustee responded by filing a special motion to strike (“anti-SLAPP motion”) on the theory that beneficiary sued him for filing and funding litigation, a protected activity
- Trial court denied the anti-SLAPP motion, and trustee appealed
- Holding on appeal? **AFFIRMED**
- Allegations that trustee breached fiduciary duties by using trust assets to fund meritless litigation did not arise out of protected activity



McGee v. State Dept. of Health Care Serv. (2023) 91 Cal. App. 5th 1161

- Trustee of a special needs trust filed his fourth accounting petition
- Trial court determined trustee abused his discretion and breached the trust by making distributions for items and services that did not constitute “special needs” as defined by the instrument
- Trial court interpreted the term “special needs” to refer only to “the beneficiary’s special needs as created by the limitations due to her condition” and surcharged trustee for expenses outside such purpose
- Holding on appeal? **REVERSED AND REMANDED**
- Trial court abused its discretion by applying the wrong legal standard when it defined “special needs” more narrowly than allowed under the trust instrument and special needs trust law in general



Jo Redland Trust v. CIT Bank, N.A. (2023) 92 Cal.App.5th 142

- Dupree, an attorney and trustee of the trust, filed a complaint that named the trust as the plaintiff
- Three years later, Dupree sought leave to amend the complaint to substitute himself, as successor trustee, as the plaintiff
- Trial court denied leave to amend on the ground that the complaint was a nullity from inception; thus, Dupree could not rely on the “relation back” doctrine to avoid a statute of limitations bar, rendering the proposed amendment legally futile and unjustifiably late
- Holding on appeal? **REVERSED**
- Complaint did not deprive court of fundamental jurisdiction and trial court abused its discretion in denying leave to file an amended complaint substituting trustee as the plaintiff

Städel Art Museum v. Mulvihill (2023) 96 Cal.App.5th 283

- Two different trusts each held a 50% interest in real property
- Both trusts named the same trustee, but named different beneficiaries
- Under PC 17200, the trustee petitioned the court for instructions due to a potential conflict of interest between the beneficiaries of the two trusts
- Beneficiaries of one trust wanted to sell the real property and distribute the cash proceeds, but the beneficiary of the other trust wanted an in-kind distribution
- Probate court instructed trustee to immediately sell the properties and distribute the proceeds to the respective beneficiaries
- Städel Art Museum, one of the trust beneficiaries, appealed
- Holding on appeal? **VACATED AND REMANDED**
- Where trust gave the trustee “sole discretion” to make any distribution in cash or in-kind, it was error for the probate court to interpret the trust as requiring an immediate sale of real property and distribution of the proceeds



Colvis v. Binswanger (2023) 96 Cal.App.5th 393

- Trustors established a trust for the benefit of their five children
- The trust held a 70% interest in a company, of which the children, personally, owned the remaining 30% in equal shares
- Two of the five beneficiaries filed a petition to instruct the trustee to take certain actions, including directing the company to borrow substantial sums to pay estate taxes owed by the trust
- The company filed a response to the PC 17200 petition
- Petitioners objected to the company's involvement, claiming the company lacked standing because it was neither a beneficiary nor trustee
- The court found the company lacked standing
- Holding on appeal? **REVERSED**
- In addition to a trustee or beneficiary, an interested person may have standing to respond or object in a trust proceeding

Robinson v. Gutierrez (2023) Third Dist. Case No. C097301

- Caregiver moved in with decedent and provided care services in exchange for free room and board
- Then, estate plan amended to name caregiver as trustee and beneficiary
- Decedent's heirs petitioned re validity of EP, alleging EFA and UI
- Trial court denied heirs' petition on the ground that free room and board did not constitute "remuneration" for purposes of the care custodian presumption because room and board was not taxable income
- Holding on appeal? **REVERSED**
- Caregiver who receives free room and board in exchange for care services qualifies as care custodian, and donative gift is subject to presumption of fraud or undue influence; taxable income not the standard

Hamilton v. Green (2023) Second Dist. Case No. B323621

- Trustee served a trustee notification under PC section 16061.7
- After expiration of the 120-day deadline, grandchildren filed a civil complaint alleging several torts, including IIEI
- All causes of action required trial court to find trust amendment was invalid
- Trial court sustained trustee's demurrer without leave to amend on ground that complaint was time barred by 120-day deadline per PC 16061.8
- Holding on appeal? **AFFIRMED**
- Civil complaint was “an action to contest a trust” within the meaning of PC section 16061.8 because “the practical effect” of the complaint was a challenge to the validity of the trust instrument, and it was therefore subject to the 120-day deadline



Estate Cases

Law Firm of Fox & Fox v. Chase Bank, N.A. (2023) 95 Cal.App.5th 182

- Law firm represented administrator of probate estate
- During probate, court confirmed sale of real property and ordered proceeds deposited into blocked account at Chase Bank
- Law firm obtained order for fees upon petition for final distribution
- Administrator improperly withdrew all the money without court order, so there was no money to pay the law firm its fees
- Law firm sued for negligence, but trial court found no duty and granted MSJ
- Holding on appeal? **REVERSED**
- Bank owed law firm a duty of care based on the special relationship it had with law firm as an intended beneficiary of a court-ordered estate blocked account; no withdrawals were permitted absent court order



Silk v. Bond (2023) 65 F.4th 445

- Probate exception did not apply to strip federal court of jurisdiction over *in personam* breach of contract action brought after disallowance of a creditor's claim even though valuing the estate would be necessary to compute damages award
- Holding on appeal? **REVERSED**
- The probate exception is narrow, giving state courts exclusive power to:
 - (1) probate or annul a will;
 - (2) administer a decedent's estate; and
 - (3) assume *in rem* jurisdiction over property in probate
- Silk's suit did not seek to probate or annul a will
- Valuing estate to calculate contract damages did not amount to administering estate
- Appellate court found the suit involved standard *in personam* jurisdiction for breach of contract against a contracting party, who was now deceased



U.S. v. Paulson (2023) 68 F.4th 528

- \$200 million estate with \$10 million in unpaid estate taxes
- U.S. sued heirs that were trustees and beneficiaries who had received estate property
- District Court granted motions to dismiss under federal law as to those defendants not in possession of estate property on date of death
- Holding on appeal? **REVERSED** (on federal claims, without deciding state law claims)
- Persons who hold estate property, or receive it on or after the date of death, are personally liable for unpaid estate taxes on that property
- Internal Revenue Code imposes a lien on the gross estate and personal liability on six listed categories of persons “who receive or have estate property”
- The six categories are (i) spouses, (ii) transferees (not including bona fide purchasers), (iii) trustees, (iv) surviving tenants, (v) persons in possession by way of exercise of power of appointment, and (vi) beneficiaries

Estate of Kempton (2023) 91 Cal.App.5th 189

- Kinney briefly served as attorney for the administrator of Kempton's estate
- Prior to Kempton's death, Kinney and Kempton filed numerous baseless lawsuits in state and federal courts, resulting in multiple judgments against them and ultimately leading to Kinney's disbarment
- Special administrator filed a petition for approval of final accounting
- Special administrator requested authority to pay Kinney's \$1,000 statutory fee to Clark, a lienholder on the judgments against Kinney
- Trial court approved the petition and Kinney appealed
- Holding on appeal? **AFFIRMED**
- Special administrator had discretion to pay statutory fee earned by administrator's attorney to third-party judgment creditor in partial satisfaction of attorney's judgment debt



Estate of Sanchez (2023) Sixth DCA Case No. H045037

- Estate's personal representative (PR), acting in pro per, filed an 850 petition in the probate case
- Respondent moved to strike on the basis that PR could not proceed without counsel
- Probate court struck the petition with leave to amend and time to secure counsel; PR appealed
- Holding on appeal? **AFFIRMED**
- A PR may not represent the estate in pro per, even in a probate case, on claims pursued for the benefit of the estate's beneficiaries
- PR's claims were made for the benefit of estate beneficiaries such that they amounted to unauthorized practice of law on their behalf



Bailey v. Bailey (2023) 96 Cal.App.5th 269

- George filed a petition for probate alleging that his brother died intestate
- George later found a will and lodged it with the court
- Court granted the intestate petition so George could “get things organized”
- Thereafter, George served the will’s beneficiaries, including Olan, with a document entitled “Notice to Potential Beneficiary of Petition for Letters of Administration Under Probate Code 8226” and included copies of the will, the probate petition, the probate order, and letters of administration
- More than 60 days after receiving the Notice to Potential Beneficiary and more than 120 days after the Court appointed George as special administrator, Olan petitioned to probate the will
- Decedent’s son, Mitchell, objected to the petition as untimely
- Probate court admitted the will on grounds the time limits in Section 8226(c) were inapplicable because Olan did not receive pre-hearing notice of George’s intestate petition; Mitchell appealed
- Holding on appeal? **AFFIRMED**
- Time limits in Probate Code section 8226(c) for filing a petition to probate a will only bar the will proponent if that proponent received pre-hearing notice of a prior, competing petition for probate



Algo-Heyres v. Oxnard Manor LP (2023) 88 Cal.App.5th 1064

- Skilled nursing facility sought to enforce an arbitration clause when successors-in-interest to deceased resident brought an action for wrongful death and elder abuse, among other claims
- Based on medical records, trial court found decedent lacked capacity to consent to arbitration and denied the petition to compel arbitration
- Holding on appeal? **AFFIRMED**
- Arbitration agreement not valid and enforceable against decedent's successors-in-interest where decedent lacked capacity to consent to arbitration when he executed the contract
- Substantial evidence established lack of capacity, including failure to recognize spouse and grandchild



Estate of Berger (2023) 91 Cal.App.5th 1293

- Berger wrote a letter “to whom it may concern,” stating her testamentary wishes to leave assets to Coronado (letter was signed and dated, but not witnessed)
- On the same day, Berger emailed Coronado and told her about the letter
- When Berger died, her pastor found the letter in a desk drawer and informed Coronado
- Coronado sought to admit the letter as Berger’s will; Berger’s sister opposed
- Trial court denied the petition after an evidentiary hearing, holding the letter did not comply with the requirements for a will because Coronado failed to prove by clear and convincing evidence that Berger intended for the letter to be her will
- Coronado appealed, arguing the court erred by admitting extrinsic evidence of Berger’s intent because the letter was unambiguous
- Holding on appeal? **REVERSED**
- Extrinsic evidence is admissible to determine whether a document was intended as a will even when the terms are unambiguous; but the letter should have been admitted to probate because the evidence showed the letter was intended to be a will

Conservatorship Cases

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White v. Davis (2023) 87 Cal.App.5th 270

- Trustee applied for an elder abuse restraining order (EARO) related to the defendants' effort to unduly influence settlor of trust
- Defendants responded with an anti-SLAPP motion under the theory the EARO was based on underlying trust litigation
- Trial court denied the anti-SLAPP motion
- Defendants appealed, staying the EARO proceeding pending appeal
- Trustee cross-appealed on grounds the trial court should have used its case management power to hear the EARO concurrently with the anti-SLAPP motion to avoid delay
- Holding on appeal? **AFFIRMED IN PART AND REVERSED IN PART**
- Court properly denied the anti-SLAPP motion but abused its discretion by declining to hear the EARO until after the anti-SLAPP motion

Conservatorship of Tedesco (2023) 91 Cal.App.5th 285

- A group of non-appointed counsel held themselves out as counsel to conservatee
- Conservator filed a DQ motion, which the probate court granted
- Holding on appeal? **AFFIRMED**
- Non-appointed counsel may not represent a conservatee unless approved and appointed by the probate court
- Probate court has the power to appoint persons to protect a conservatee's interests and the power to deny appointment of proposed conflicted counsel as conservatee's independent counsel
- Probate court sitting in exclusive concurrent jurisdiction of a conservatorship may disqualify others from representing a conservatee in other matters



Tedesco v. White (2023) 96 Cal.App.5th 1090

- In a trust contest where one of the settlors is conserved, Debra issued a deposition subpoena to the law firm that previously represented the conservator seeking all documents, writings, or communications relating to the conservatee's accounts and assets
- Conservator moved to quash the subpoena based on, among other things, overbreadth and the privacy rights of the conservatee, and sought monetary sanctions
- Trial court granted the motion and awarded \$6,000 in monetary sanctions on grounds the subpoena was oppressive and a misuse of discovery
- Holding on appeal? **AFFIRMED**
- Monetary sanctions were properly awarded because the subpoena was overbroad, violative of the conservatee's privacy rights, and issued for an improper purpose



Intestacy Cases

Estate of Franco (2023) 87 Cal.App.5th 1270

- In an intestate probate proceeding, trial court granted motion for summary judgment (MSJ) barring son from proving decedent was his biological father because son was presumed to be a natural child of his mother's marriage to another
- Ruling based on stipulated facts of marriage at the time of son's conception and birth, and identification of his mother's husband on his birth certificate
- Thus, trial court ruled son could not establish himself as an intestate heir
- Holding on appeal? **REVERSED**
- Summary judgment was improper where presumption of natural parentage was applied w/o the prerequisite factual finding of cohabitation of spouses
- Presumption of natural parentage of married spouses applies only where spouses were cohabitating at the times of conception and birth of the child

Estate of Martino (2023) 96 Cal.App.5th 596

- Decedent died intestate and his stepson from a previous marriage petitioned to be deemed an heir
- Stepson conceded he could not establish that a legal barrier to adoption persisted until decedent's death and instead sought to establish heirship on the ground that decedent openly held him out as his natural child
- Decedent's biological children objected
- Probate court ruled that decedent's biological children failed to rebut the presumption of parentage and that decedent was petitioner's "natural parent" for purposes of intestate succession
- Holding on appeal? **AFFIRMED**
- A stepchild may establish a right to intestate succession where the decedent receives the child into their home and openly holds out the stepchild as their natural child

Exempt Organization Case

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Breathe So. Cal. v. Am. Lung Assn. (2023) 88 Cal.App.5th 1172

- Breathe Southern California (Breathe) and American Lung Association (ALA) entered into an affiliate agreement requiring income sharing between the entities, but specifically exempting certain income categories, including “funds restricted in writing by the donor ... to exclude or limit sharing”
- ALA sought an order compelling Breathe to share proceeds of three bequests
- Trial court ruled for ALA, concluding the restricted-funds exception was inapplicable b/c the donors didn't use language prohibiting income sharing
- Holding on appeal? **REVERSED**
- Where there is no extrinsic evidence regarding the testators' intent, courts exercise their independent judgment in interpreting bequests
- The plain language of the bequests restricted sharing with ALA



Malpractice Case

Gordon v. Ervin Cohen Jessup LLP (2023) 88 Cal.App.5th 543

- Where EP attorney drafted trust amendment to disinherit specified grandchildren, client's other family members could not sue that attorney for legal malpractice for subsequently drafting LLC operating agreements that permitted the disinherited grandchildren to receive interests in the LLCs through lifetime gifts
- Holding on appeal? **AFFIRMED**
- Under the eight-factor test set forth in *Lucas v. Hamm* (1961) 56 Cal.2d 583 and its progeny, EP attorney did not owe a duty to the non-clients to draft the LLC operating agreements in a way that disinherited the three grandchildren
- Client's intent to prevent the three grandchildren from receiving any shares of the LLC was not "clear, certain, or undisputed"
- Client's undisputed intent as to testamentary gifts was insufficient to show she necessarily had the same intent as to lifetime gifts

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THANK YOU