

PUBLICATION UPDATE

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California Probate Procedure

Publication 80258

Release 28

December 2024

HIGHLIGHTS

- Digital Assets
 - The filing of petition for probate
 - Testamentary Intent
 - Standing
 - Contests before and after probate
 - Evidence and Trial
 - Fee Agreement
 - Preserving and protecting the Estate
 - Proceedings to determine persons entitled to disposition
- “In *Matter of Moran*, 2023 NY Slip Op 32004(U), Sur. Ct. N.Y. Co, an executor sought to retrieve the decedent’s personal digital data from Apple, including music, photographs, text mes-

sages, and email correspondence. The court directed Apple to provide: (1) access to digital assets other than the content of electronic communications, including but not limited to, photographs, notes, and music; and (2) a catalogue of electronic communications sent or received by decedent’s user ID. The court denied the request for content of electronic communications, including email, texts, or other correspondence, sent or received by decedent. But the court noted the petition could amend the petition by affidavit that: (1) identifies the specific digital assets or information she is seeking; (2) explains how disclosure of this data or information is

reasonably necessary for the administration of decedent's estate; (3) describes where petitioner be such information is stored (e.g., Cloud, iTunes, etc.); and (4) states whether decedent provided any direction for disclosure of his digital assets or provided consent for petitioner to access this data, as provided in EPTL 13-A-2.2 {See Chapter 2, § 318}

- “A notice to potential beneficiary that was served by the decedent’s brother gave respondent none of the due process afforded to those who received formal notice of the original petition under Prob. Code § 8110. If the brother sought to bring the will’s beneficiaries within the ambit of Prob. Code § 8226, he should have amended his petition and served them pursuant to Prob. Code § 8110. (*Bailey v. Bailey* (2023) 96 Cal. App. 5th 269 [314 Cal. Rptr. 3d 265].)” {See Chapter 4, § 403}
- “In *Estate of Martino* (2023) 96 Cal. App. 5th 596 [314 Cal. Rptr. 3d 630], the Court of Appeals of California held that a stepson had standing to claim “natural parentage” for heirship purposes. Harmonizing the provisions of the probate code, the court held that Prob. Code, § 6454, does not pre-

clude an alternative pathway for intestate succession by stepchildren under Prob. Code, § 6453(a). Because § 6453(a) defines natural parentage for purposes of intestate succession to include presumed parentage that is not rebutted under the Uniform Parentage Act (UPA), Fam. Code, § 7600 *et seq.*, a stepchild may establish a right to intestate succession under Fam. Code, § 7611(d), which creates a presumption of natural parentage if the presumed parent receives the child into their home and openly holds out the child as their natural child. The decedent’s biological children did not challenge the sufficiency of evidence to support any of the probate court’s factual findings.” {See Chapter 6, § 611}

- “The court determines the sufficiency of the party’s interest for the purposes of each proceeding conducted. Thus, a party may qualify as an interested person entitled to participate for purposes of one proceeding but not for another. See *Colvis v. Binswanger* (2023) 96 Cal. App. 5th 393 [314 Cal. Rptr. 3d 598].” {See Chapter 7, § 701}
- “The Probate Code establishes distinct, though overlapping procedures for chal-

lenging a will before and after its admission to probate. A contest of a will not yet admitted to probate may be initiated by filing an objection to probate of the will. *Larsen v. Horsfall (In re Estate of Montgomery)* (2024) 2024 Cal. App. Unpub. LEXIS 4911, *6.” {See Chapter 7, § 702}

- “Note that deposition subpoenas that are overbroad could result in discovery sanctions. In *Tedesco v. White* (2023) 96 Cal. App. 5th 1090 [314 Cal. Rptr. 3d 901], the court held that the conservator was permitted to assert an unreasonable intrusion into the conservatee’s right to financial privacy because it was the conservator, not appellant or her counsel, who was empowered to decide what claims were in the conservatee’s interest. The court noted that Appellant’s opening brief confirmed that the subpoena was a misuse of discovery because she effectively admitted that her goal was to conduct an expeditionary search for unidentified financial misconduct. {See Chapter 7, § 703}.
- “Probate Code section 8250(b) now makes it clear that a person named executor in a will has no duty to defend a will contest until such person is actually ap-

pointed executor by the court. However, this does not mean a named executor does not have the burden of proving the will was duly executed under Probate Code section 8252. *Monica v. Bayona (In re Estate of Baird)*, 2024 Cal. App. Unpub. LEXIS 349, *11. If a named executor chooses not to defend against the will contest (because his duty to defend has not yet arisen), then the burden of proving due execution simply will not be met and the court will not admit the proffered will to probate.” {See Chapter 7, § 704}.

- “Probate Code Section 859 is punitive in nature and separately permits the award of “twice the value of the property recovered by an action under this part” in addition to any other remedies available. It has been previously held that return of property is fundamentally remedial in nature while double damages under Prob. Code § 859 are punitive in nature. In *Asaro v. Maniscalco* (2024) 103 Cal. App. 5th 717, 741, the court explained section 856 authorizes the return of property (the compensatory component) and then section 859 authorizes a penalty of twice the value of that compensatory component.” {See

Chapter 10, § 1002C[4]}.

- “In several cases concerning final distribution orders, the California Supreme Court has held that while the order is conclusive and binding on those with direct claims on the estate such as heirs, it does not invalidate an heir’s

contract or arrangement to assign or convey the heir’s interest in the estate to another person. *Estate of Flores*, 98 Cal. App. 5th 619 [316 Cal. Rptr. 3d 843].” {*See* Chapter 19, § 1921[D]}.

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