



Chambers of

The Superior Court

Roger L. Lund, Judge

JUVENILE JUSTICE CENTER
4353 E. Vineyard Avenue
Oxnard, CA 93036
(805) 289-8858

Courtroom J6 Probate Notes 2020

1. "My, what a difference a year makes!"
2. Grateful for cooperation of probate bar during COVID-19 Pandemic – lots of changes:
 - a. Flexibility is the name of the game. Probate Section Chair, Amber Rodriguez, is the clearinghouse for problems you are experiencing with the Court, and is very good at raising issues for attention.
 - i. Example: New eDelivery memo line (effective 6/10/20 when we re-opened) allows you to request particular hearing date(s).
 - b. 75-80% of cases are remote (CourtCall audio/video; Zoom on Fridays) appearances, which allows us to operate normally. Please continue remote appearances where possible until further notice that the distancing/mask rules are no longer required.
 - c. Proposed orders must be submitted prior to hearing or petition/motion will be rejected. Local Rule 10.00.D.1. CourtroomJ6@ventura.courts.ca.gov email address should only need to be used sparingly for orders after hearing now.
 - d. Orders signed will be processed same day or possibly next day, if staff shortage, and returned to you via method you've chosen (appointment for pickup at clerk's office, return mail, etc). Be sure to give instructions for return after hearing when you submit petition. A self-addressed stamped envelope provided with or at the same time of your initial filing would be very helpful for the clerks to return your orders to you on the same day (although return by mail will actually be picked up by the USPS mailbox the business day after the hearing).
 - e. New website: judgerogperlund.com, periodically updated. During another shutdown, this will be primary means of communicating with probate bar. See the website for new walk-through stipulated petition procedure.
 - f. Due to staff availability at JJC, our new paper-on-demand case management system, called "eCourt" will begin development in Probate this year and will likely be finished and ready for deployment at the end of 2021 or early 2022. At that point, you will be able to file your cases electronically, much like in other counties. eCourt is the same system used by the probate court in Riverside Superior Court, but will be modified to conform with Ventura County practices. Suggestions and input on development wish lists are welcome.

- g. Private Counsel Panel for Conservatees to offload 50 non-indigent cases from Public Defender's office to private counsel is proceeding as planned. Thank you to private counsel panel for conservatees. See the website for more information about joining this panel.
 - h. Would like to schedule an MCLE event called Tips on Conservatorship Accountings and Attorney Fee Declarations to be delivered with Probate Examiner and Legal Research. Stay tuned.
 - i. Due to severe budget cuts as a result of the pandemic, we will be furloughing employees and the court will be closed for all probate operations for 18 days during fiscal year 2020-2021, with the remaining dates as follows: 11/18/20, 11/25/20, 12/16/20, 12/23/20, 12/24/20, 12/30/20, 12/31/20, 1/15/21, 2/11/21, 3/10/21, 3/17/21, 4/21/21, 5/5/21, 5/19/21, 6/9/21, 6/23/21.
3. Probate Case Management Policies from 2019 State of Probate Court still apply; soon to be on the JudgeRogerLund.com website.
4. Questions?
5. Tips:
- a. Extra Copies of Accountings: Always provide an extra copy of any conservatorship accounting you file.
 - b. Petitions vs. Motions: We are finding that some attorneys are filing petitions as motions, likely to avoid a higher filing fee. Please look to the statute under which you are filing to determine the substance of the pleading you are filing to determine the proper fee. Please caption your petitions/motions properly. If this continues to be a problem, the Court may need to take further steps to ensure proper fees are assessed. You are sworn officers of the Court and your word should be your bond. Please be honest in captioning your petitions/motions properly and providing the appropriate fee.
 - c. Capacity Declarations: Review all boxes and information in Capacity Declarations for conservatorships before filing. Basic and critical information is often missing, overlooked by physicians. It is your obligation to ensure a complete Capacity Declaration is filed. Facts showing why the proposed conservatee cannot attend the hearing (at the bottom of page 1) are most often overlooked or are conclusory statements. Specific details and facts are required.
 - d. Free CourtCall Public Line is for LISTENING only: If you want to make an appearance, you must pay and make your usual reservations. On Fridays, the public may also listen on LiveStream. See the court's website for access details.
 - e. Categorization on Accountings: Categorization of expenditures and income on accountings remains a constant source of frustration for the Court in reviewing accountings. Please study up and follow the rules.
 - f. New Probate Petition Publication issues:
 - i. We are updating the list of Adjudicated Newspapers of General circulation in Ventura County to include current cost of each publication

and the authorized area of circulation. Be sure you use a proper newspaper to publish based on decedent's domicile at death. For example, if your decedent died in Simi Valley, please do not publish in the Ojai Valley News.

- ii. We have noticed a recurring problem with new probate petition publication certifications, which largely applies to publication certifications from the Ventura County Star, at present, but could apply to any of the newspapers who run their legal notice certifications from an out-of-state office: A newspaper clerk's unsworn statement showing due publication of the notice of hearing, if executed out of state, must state that it is made under penalty of perjury under the laws of the State of California. (See C.C.P. § 2015.5; Prob. C. § 8124.) Otherwise, it is not a proper substitute for an affidavit, which by definition is a written declaration made under oath. (C.C.P. §§ 2003-2015.5.) Many of the Ventura County Star publication certifications are signed by an employee out of state under penalty of perjury, but must state "under penalty of perjury under the laws of the State of California" or words to that effect. Please carefully check your publication notices.
- g. Filed Financial Statements: Pursuant to Probate Code Section 2620(c)(7), financial account statements are not considered "Confidential". The information contained in financial statements is such that would be ordinarily disclosed in a court accounting or an inventory and appraisal. Therefore, they are not considered "Confidential" absent an affidavit describing the confidential character of the document. Conservator may redact partial account numbers when filing financial statements with the court, but they will routinely be filed in the public file. Only in exceptional circumstances should counsel request, by affidavit, for financial statements to be included in the confidential file.
- h. Probate Code Section 850 Petition Notices:
 - i. Probate Code Section 851(a)(2) requires typical notice form (DE/GC-115) and copy of petition to be served.
 - ii. Also, CCP 413.10 refers to CCP 415.10, which requires personal service by (1) personal delivery, or (2) completion of service by mail with Receipt filed. No subpoena is required, no summons is required. Just a copy of the petition and notice of hearing properly served per Probate Code Section 851(a)(2) and CCP 415.10.
- i. Fee Declarations: Be sure your fee declaration complies with CRC 7.751(b) - 7.702(1)-(6) and paralegal work complies with CRC 7.754 – 7.703(e). Fiduciary fee declarations should follow CRC 7.751(1)(b), 7.702(1), (2) & (3). "Block billing" by fiduciaries is not appropriate (e.g. one trip to the bank for many clients and bill 1 hour for each for the task). Future MCLE in the works.
- j. Ex Parte Requests for Special Administration: *General* powers can only be granted after proper notice and publication (Pr.C. 8545, 8003). So only request the most *limited* special powers (spelled out) as part of your ex parte request.

- k. Conservatee Moves: Petitions to fix residence of conservatee out of state should be accompanied with a Petition for Transfer.
- l. Substituted Judgments in Conservatorship cases: Do not create a new trust case. File petition in conservatorship case so that it's heard on a conservatorship day.
- m. Ex Parte Emergencies: (actual examples)
 - i. True Emergencies: Immediate medical treatment needed, pending house foreclosure a fiduciary recently became aware of, imminent deathbed situation. These can't wait.
 - ii. Not True Emergencies: Someone absconding with mom's money "for about a year", sibling keeping mom from seeing family and withdrawals from bank account. These can all wait 5 days for a temporary conservatorship.
- n. Filing Proof of Service: When you give notice of your petition, please file the Proof of Service immediately and do not wait until just before the court hearing to file it. Too many are filed late. The best practice is to file it the same day you give notice.
- o. Many of our most hotly litigated cases surround parents leaving a house to more than one child to live in for the rest of their life. There is rarely adequate funding; multiple people living together is always problematic. Please advise your clients of the landmines associated with this well-intentioned desire and see if you can draft around it. It never works, in my experience.
- p. If a beneficiary of an estate is a trust, per Probate Code Section 10954(b)(4), petitioner must file trustee's acceptance of trust in order to waive accountings or notice.
- q. When you submit a stipulation and order re: settlement, please inform the court about what to do with future hearings – e.g. does the settlement itself dismiss the case so future dates can be vacated? Should we set a dismissal hearing?