



CHAMBERS OF

# The Superior Court

ROGER L. LUND, Judge

JUVENILE JUSTICE CENTER  
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Oxnard, CA 93036  
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## Courtroom J6 Probate Notes 2019

### I. POLICIES:

1. Court needs to use taxpayer resources wisely.
2. Trial is NOT time for settlement to begin.
3. Settlement is good for families, who have likely saved a lifetime to accumulate the estate.

### II. MANAGEMENT TECHNIQUES:

1. Caps are placed on all calendars so everyone gets heard in a timely fashion.
2. Keep like matters together (Conservatorship reviews and motions, new Conservatorships, Probate/Trust Cases, Trials/Evidentiary Hearings).
3. Cases will be called from easiest to hardest. No priority for CourtCall.
4. Asking for priority should be for true emergencies only and is strongly discouraged. OK to ask to be placed at foot of calendar.
5. Ex Partes are for true emergencies only (party's emergency because of delay in filing is not a judicial emergency); paperwork needs to be filed the day before per CRC and local rules.
6. Generally, the Court will continue its longstanding case management protocols in contested cases by staying most formal discovery, encouraging informal discovery that might be helpful for settlement, and sending most cases to mediation before any trial or evidentiary hearing is set. A post-mediation status conference will continue to be set to triage the case after mediation. Although the Court will determine the payment of private mediator fees on a case-by-case basis, generally, the cost of the mediation will be borne by the trust or estate, subject to reallocation by the court.
7. Meaningful MSCs/Mediations to settle the case are much more "meaningful" if the parties have met and conferred well before MSC/Mediation.
8. No reservation of trial dates - even "just in case". Trials/Evidentiary hearings only follow MSCs/Mediation.

9. Expect scrutinization of issues, witnesses, readiness and accurate time estimates at the time trials/evidentiary hearings are set.
10. “I do not set trials/hearings until I see the whites of your papers.” All discovery must be completed prior to setting trials/evidentiary hearings.
11. Judges Pro Tem will no longer be authorized to set trials/evidentiary hearings in J6 or a civil courtroom.
12. Minimize continuances. Workflow re-organization by the court is allowing tentative rulings to be issued sooner than in the past; please take advantage of this advance time to cure any defects to avoid continuances.
13. Tentative rulings are usually available 3-6 court days in advance to give as much advance notice to a party to be able to correct deficiencies and avoid a continuance.
14. Chambers conferences are encouraged when appropriate.
15. OK to call judge (via secretary) to make appointment for chambers or telephone conference at any point in the case to help settlement as long as all parties are represented (i.e. no ex parte communications).
16. The Court will make every effort to arrange for a Settlement Officer for appropriate cases to facilitate settlement.
17. I do not have caps for approved attorney fees or paralegals, but all fees must be reasonable for the matter undertaken.
18. Continuances prior to hearing should be made by contacting the judicial secretary via a faxed Request for Continuance form. Requesting party will be expected to provide notice of the continuance to all persons entitled to notice. If the continuance is granted, the matter will be continued and will not be called on the record.
19. Demurrers, motions to strike, etc., will continue not to be recognized in probate proceedings.

### III. SUGGESTIONS/EXPECTATIONS:

1. Come prepared to identify the issues in dispute at MSC/TSC/Mediation, including the law supporting your position.
2. Follow the statutory, CRC, and local rules. Common mistakes include:
  - a. “New” PC 851 Rules effective 1/1/2018: Beware of PC 850 Petitions: Until the Judicial Council notice form is updated, you will need to manually insert the language from PC 851(c)(1),(3), or your notice is defective and a continuance will be required to remedy the defect. This is often the only reason for a continuance of these cases, so please double-check your notices.
  - b. CRC 7.705(b): “Notwithstanding the waiver of account, if the petition and report requests statutory commissions or fees based on any amount *other than* the amount of the Inventory and Appraisal, *detailed schedules of receipts and gains and losses on sales must be included.*” See also CRC 7.550(b).

- c. CRC 7.751(b): Declaration in Support of Fee Request must specify the amount requested for each category of service performed, show the nature and difficulty of tasks performed, the results achieved, and the benefit of the services to the estate. Trust and conservatorship services need to be separated for the declaration. This format of the declaration allows the Court to determine whether your fees are reasonable.
  - d. PC 9202 Notices: Be sure to address notice to the Franchise Tax Board, Director of Health Care Services, Director of Veteran's Affairs, and Director of Victim Compensation Board in all probates as required and put the allegation that you have done so/not done so and why in your final distribution petition.
  - e. PC 10954: Be sure to file Acceptance of Trust by trustee beneficiary in probate cases.
  - f. Local Rules on everything, particularly Spousal Property Petitions.
  - g. Electronics: The difference between electronic submissions ("e-filing") vs. CourtroomJ6 email address. E-delivery is a service that allows for electronically filing documents *through the clerk's office* as an alternate option to filing documents over the counter in person or by U.S. mail. The CourtroomJ6 email address is for ORDERS AFTER HEARING and submitting previously filed documents ONLY AS REQUESTED BY THE JUDGE, and is only available for 48 hours following the hearing. All orders after 48 hours should be submitted through the clerk's office. The CourtroomJ6 email address is NOT for requesting a continuance, submitting or filing documents, asking for priority, submitting on a tentative, submitting orders prior to hearing, or for any other reason. Beware of ex parte communications with the judge. "Signed and sent to processing" means it goes to my OUT box, not that it is downstairs for you to pick up that minute. Give it until the next day for pick-up.
  - h. Contempts: Use Judicial Council Citation form and DO NOT FILE MOTIONS RE: CONTEMPT. Procedure is to complete citation form, with attachments, submit to clerk, which is then routed to judge for review and approval prior to issuance of Citation for Contempt. A date will be calendared after judicial review of citation to affirm that a prima facie cause of contempt exists.
  - i. Capacity Declarations (JC Form 399): Physicians often do not complete the entire form. Ensure the entire form is correctly completed BEFORE you file it. You may need to return it to the physician several times to get it correct.
3. Because the parties and Court will be prepared, expect the Court to make decisions at each hearing.

4. I prefer not to take matters under submission. Please be sure to include points and authorities in your pleadings so that I can clearly understand exactly what is at issue. I don't make up the law; I apply and enforce it.
5. I encourage stipulations along the way on agreed upon issues – the sooner people are committed to a position, the fewer issues remain in dispute. Then, only focus on areas of dispute and try to resolve the issues in dispute.
6. Please be courteous to one another and don't get personally/emotionally involved in your client's cases. As officers of the court, we should be the examples of dignity.
7. Bring in a proposed order on all hearings where practicable; include an order with application for ex partes. No need to put "Proposed" on proposed order submitted prior to hearing. Ideally, submit proposed order at time of filing petition.
8. Please be sure to circulate proposed orders after hearing among all parties PRIOR to transmission to the court. I presume that all orders after hearing submitted to

the court are approved by all parties at the time of submission. If there is a dispute about language in an order, provide letters or declarations concerning problems with proposed language in the order at one time so I can determine what the proper language should be in the written order and ensure everyone's voice has been heard. See CRC 3.1312.

9. We should only try issues in each case ONCE.
10. Attorneys are encouraged to implement mediation as early as possible in the life of a contested case to conserve both family and court resources to the greatest extent possible. Dispute resolution can be by private mediation, Department 22 MSC (for cases with no funds for private mediator, currently limited to one per month), MSC with probate judge, or with voluntary settlement officer appointed by the court.
11. Accountings: Be sure to tell the story for your accounting in the narrative pleading. You likely know the weaknesses in your accounting. It is best to highlight and address any problem areas in your accounting narrative, because the numbers only tell the "what happened." You also should be telling me the "why happened." Without an explanation in the narrative, we usually assume the worst.
12. Lock up your settlements in writing executed by all parties at the earliest possible moment. **DO NOT WAIT. STRIKE WHILE THE IRON IS HOT!** Otherwise, "agreer's remorse" typically sets in. A handwritten document executed by all parties contemporaneous with the settlement reached is preferable to a nice-looking, typewritten document done at a later date when one party may have second thoughts. Be sure to include CCP 664.6 language. If you happen to settle a matter on the courthouse steps and all parties are present in person or by phone, I will be happy to swear in all parties and place the settlement on the record.

#### IV. PRE-TRIAL/HEARING:

1. Discovery previously stayed to facilitate early settlement will be afforded to the parties prior to any trial/evidentiary hearing.
2. No trial or evidentiary hearing will be set until after mediation and discovery is complete.
3. Trial briefs are encouraged and will be read when filed at least five (5) court days prior to trial/evidentiary hearing.
4. Be prepared to provide ACCURATE TIME ESTIMATES for trials/evidentiary hearings.

#### V. TRIAL/EVIDENTIARY HEARING:

1. Effective February 25, 2019, all trials and evidentiary hearings in J6 will occur on Mondays only (all day). The court will no longer set hearings on Thursday or Friday afternoons. This should allow for more contested probate and conservatorship cases to be heard in the probate courtroom with a judicial officer experienced in probate matters.
2. Maximum time for trial in J6 is 2 days. Any case that exceeds the time estimate in J6 likely will be mistried and sent to the civil department for retrial.
3. Don't expect to do discovery at the hearing/trial.
4. Many cases can be heard based on declarations subject to cross-examination to conserve time.
5. Please talk to opposing counsel well before the trial/hearing.
6. Keep testimony laser-focused and relevant to the issue at trial. Suggestion: Call your best/most relevant witness first.
7. Generally, parties must bring their own court reporter to all trial/evidentiary hearings except guardianships, conservatorships, restraining orders, and contempts. See Local Rule 18.

#### VI. POST-TRIAL MOTIONS:

1. If a long-cause case is tried in a civil courtroom and you have to file a post-trial motion, caption the motion POST-TRIAL MOTION, and include the civil department courtroom number at the HOJ where the case was tried when the motion is presented for filing. The clerks will then look for the next available date for that judge and bypass the J6 courtroom stopover. A date for a Motion for New Trial, however, will not be set when the motion is filed but will be forwarded to the person responsible for calendaring within the trial courtroom so that all CCP rules and procedures are followed.

VII. GENERALLY:

1. E-Courts is coming to probate by 2020, which will entirely change the practice of law in J6. We will be transitioning to a paperless case management system.
2. Voluntary Settlement Officer Program:
  - a. Panel to consist of attorneys with:
    - i. Minimum 10 years' experience in probate/trust/conservatorships/guardianships
    - ii. Commit to spend 2 hours, once a month at attorney's office
  - b. Rotating Settlement Officer List located at Bailiff's desk;
  - c. All parties must sign Mediation Agreement to participate;
  - d. At least 1 day prior to mediation, a Mediation Statement no longer than 5 pages and all operative pleadings shall be transmitted to mediator in the format requested by the mediator;
  - e. Post-Mediation status conference will be set 60 days after hearing at which Settlement Officer is assigned.
3. Potential Courtroom J6 website.
4. I am thrilled to be in probate. Thank you all for your good quality work, collaboration, and volunteerism!
5. Any suggestions are always welcome.

We need a second probate judge. If you want probate judges to hear anything longer than two days, you should contact the presiding judge and assistant presiding judge making your case/request for a second probate judge. Be advised that adding a second probate judge also likely would entail the probate department assuming other types of cases, such as all guardianship of the person only cases currently heard in the juvenile department, elder abuse restraining order cases currently heard in the family law department, etc.