



Chambers of

# The Superior Court

**Roger L. Lund, Judge**

JUVENILE JUSTICE CENTER

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## **Through the Looking Glass into Courtroom J6 - 2021** **Trust and Estate Litigation in the Time of COVID**

1. Grateful for cooperation of all professionals 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).
    - ii. Example: New procedure authorizing Private Counsel for Conservatees to file Fee Petitions and set for same date as Accountings (effective 1/2021).
  - b. During the 3-month court shutdown, we only had one emergency calendar per week to take care of true emergencies that could not possibly wait for resolution. The other tasks accomplished during the shutdown continue to help us today:
    - i. The Public Defenders and the Court separately reviewed all status reports each week so that these several hundred cases would not need to be continued or re-calendared after re-opening.
    - ii. The Court conducted virtual voluntary settlement and status conferences so that litigated cases did not languish, and made itself available to sign settlements resolving cases.
    - iii. The Court strongly encouraged virtual private mediations to occur, even with reluctant clients. Most of those cases ultimately were resolved.
    - iv. The Court hired a probate examiner and re-organized its calendar to be able to hear more cases each week and categorize them so they could be heard more efficiently.
    - v. After hearing that proposed conservatees would not be allowed back into their group, assisted living, or nursing homes if they left to attend a court hearing, the Court enabled Zoom appearances for new conservatorships so that proposed conservatees could have access to justice for the duration of the pandemic.
    - vi. The Court established the Walk-Through Stipulated Petition process. See below.

- c. 90+% of cases are now remote (CourtCall audio/video T/W/Th; Zoom on Fridays) appearances, which allows us to operate at full calendar capacity. Please continue remote appearances where possible until further notice that the distancing/mask rules are no longer required. See Chief Justice's Emergency Rule 3 and tentative ruling template for your case.
- d. 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](mailto:CourtroomJ6@ventura.courts.ca.gov) email address should only need to be used sparingly for orders *after* hearing as requested by the judge. DO NOT submit proposed orders to CourtroomJ6 email address before a hearing.
- e. 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 (Return by mail will actually be picked up by the USPS mailbox the business day after the hearing).
- f. New website: JudgeRogerLund.com, periodically updated. In the event of another shutdown, this will be the primary means of communicating with the probate bar. ***See the website for new walk-through stipulated petition procedure.*** This procedure is to help speed along resolution of uncontested matters, such as 17200 petitions, Petitions for Final Distribution, and Settlements.
- g. 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, or sometime thereafter, 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.
- h. Private Counsel Panel for Conservatees: We have completed transferring approximately 50 non-indigent cases from Public Defender's office to private counsel from the qualified panel. Thank you to private counsel panelists for qualifying yourselves to step up and represent conservatees. See Judge Lund's website for more information about joining this panel. VCBA has a recorded MCLE program that satisfies local training requirements.
- i. Upcoming VCBA MCLE events: Tips and Tricks on Conservatorship Accountings in March 2021, and Attorney Fee Declarations in May 2021 to be delivered with Probate Examiner and Legal Research.

- j. 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: 2/11/21, 3/10/21, 3/17/21, 4/21/21, 5/5/21, 5/19/21, 6/9/21, 6/23/21.
- 2. Probate Case Management Policies from 2019 State of Probate Court still apply; soon to be on the JudgeRogerLund.com website.
- 3. Questions?
- 4. Tips:
  - a. Notices of Hearings and Proofs of Service: Please file them at the same time you mail them out. The most common defect prior to hearing is that the required notice hasn't been filed with the Court. In most cases, notice has been given but is sitting in your file. Rather than let it sit in your file and generating a probate note that you have to scramble to fix prior to your hearing, **PLEASE FILE YOUR NOTICE OF HEARING with PROOF OF SERVICE concurrent with the time you actually give the notice.**
  - b. 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.
  - c. 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.
    - i. Each Income transaction should include: 1) Name of Payor, 2) Date, 3) Purpose/Source of Receipt, and 4) Amount.
    - ii. Each Disbursement transaction should include: 1) Name of Payee, 2) Date, 3) Check #, 4) Detailed description of purpose, and 5) Amount.
  - d. 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. Notice must be served on financial institutions (lenders, banks, brokerage house, etc.) as well as all persons entitled to notice.
    - 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.
  - e. 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 CRC7.751(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.
  - f. 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; and 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.

- g. Other hotly litigated cases revolve around failure of a fiduciary to account. If you learn of a client's death, please take the initiative to send the family a letter outlining next steps needed to be taken to properly administer the trust. Most common reason for trust litigation: Trustee refusing to provide information to beneficiaries and/or taking too long to administer trust. Early and frequent communication between the trustee and the beneficiaries will help grease the wheels of trust administration. Remind your estate fiduciary clients that they signed the Duties and they are personally liable for mismanagement of funds.
- h. Accounting Beginning and Ending Balances: Don't believe your clients. Tell them you must actually see the physical bank statements. Pro tip: Get bank statements from the client ASAP after appointment.
- i. Unusual items in Accountings: Don't assume the Court remembers every detail of your case from prior accountings or what was said during hearings.
  - i. Include as an Unusual Item (in the body of your petition) anything that happened during this period or the prior accounting period if it affects the transactions in this account. Do this even if you explained it in a prior accounting or in the initial or some prior petition if the payment is occurring in THIS account.
  - ii. "Victoria Secret" purchases for Conservatee?
  - iii. Sales of real property are often overlooked.
  - iv. EACH ACCOUNT SHOULD CONTAIN ENOUGH INFORMATION TO STAND ENTIRELY ON ITS OWN WITHOUT HAVING TO LOOK THROUGH THE COURT FILE FOR ANY OTHER INFORMATION.
  - v. Also, explain unusual items to the Court BEFORE the Court questions an action. Be proactive, not defensive. If you explain everything and are transparent, you will have a better chance of having your account approved at the first hearing.
- j. Investments: Costs can be high if investment professional does not understand accounting process. Educate adviser to plan investments so that accountings will be streamlined.
- k. Frame Petitions for Instructions like a Notice of Proposed Action:
  - i. Come up with the question for the Court and the proposed answer.
  - ii. Ask for specific answer – illustrate choices for the Court but have a clear prayer/request for specific guidance.
  - iii. Financial Planning can aid decision making process.
  - iv. Court-approved actions reduce liability.
  - v. The Court cannot step into the fiduciary's shoes but can confirm an action.
- l. Partnerships are Crucial. Working together as affiliated professionals, you can accomplish successfully the often thorny task of administration of an estate, trust, conservatorship or guardianship.