**Courtroom J6 Probate Notes 2021**

1. Procedural Suggestions:
   1. For date line next to judge’s signature, please just leave it entirely blank. (not, for example, “\_\_\_\_\_\_\_\_\_\_\_, 2021” or “the \_\_\_\_\_ day of \_\_\_\_\_\_, 2021”). The Court’s date stamp has the full date. Example:

IT IS SO ORDERED.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Judge Roger L. Lund

* 1. For Proposed Orders in Accountings in conservatorships and trusts: please include dates for next accounting period, and language with blanks for filing and hearing dates. Example:

The next accounting for the period 7/30/21 - 7/29/23, shall be served and filed by \_\_\_\_\_\_\_\_\_\_\_, and set for a hearing on \_\_\_\_\_\_\_\_\_\_, 9:00 AM, Department J6.

* 1. Please file your supplements (and any documents you would like the Court to review, at least one week prior to hearing if no “file by” date is assigned, or by filing date if assigned.
  2. The Walk-Through Stipulation process will remain indefinitely. Please see Judge Lund’s website, judgerogerlund.com, for details.
  3. CourtCall: Your deadline for making a reservation to appear by CourtCall (audio or video) is 4:00 p.m. the Court day prior to the hearing. I suggest you make your reservation well before that to avoid confusion or missing the deadline. There are no exceptions.
  4. Pursuant to Probate Code Section 1830(c), Legal Research has been instructed to confirm the filing of the Notice of Conservatee’s Rights (Judicial Council Form GC-341) in every case. The statute says it must be served and filed within 30 days of the order approving the conservatorship and will be reviewed at the same time as the Level of Care filing.
  5. Please use new/revised VN-135 for Fax Continuance Request, which is attached hereto. It will be mandatory effective 1/1/2022.
  6. The Court’s position on Demurrers in J6: “This is not a civil action. Absent express statutory allowance (see, e.g., Prob.C. § 8251), the Court does not recognize a demurrer or motion to strike in the context of a probate petition. The rules of civil procedure (Code Civ. Proc. §430.10 *et* seq.) discuss demurrers in terms of complaints, cross-complaints and answers, not probate petitions. The procedure in probate is to file an objection, and proceed to evidentiary hearing.The efficacy of streamlined procedures in probate would be undermined if distribution of estates and trusts were constantly diluted by the attorney fees and the lengthy delays associated with the seemingly endless stream of pleading challenges which pervade our civil court system. The demurrer is ordered off calendar, but will be deemed argument on the objections."
  7. See new proposed Local Rules, to be effective 1/1/2022. Of particular note is a new procedure and form for informal accountings in smaller estates above $15,000 statutory waiver limit.
  8. Special Administrators appointed on ex parte notice should be asking only for special, enumerated powers listed in an attachment. The Court does not believe it has the authority to grant general powers to a special administrator without regular statutory notice and publication. Please craft your requests accordingly.
  9. Settlements: Congratulations! Many cases are settling in mediation and Stipulations and Orders are rolling in. Please remember to include “what happens next” language in the Stipulation and Order so the Court knows what to do after it signs your order. Your case will remain on calendar unless you direct in your proposed order the action to be taken. Is the case dismissed? With or without prejudice? If dismissed, is the next hearing to be vacated and case closed? If case to remain on calendar, why? What issues remain for the court to monitor or determine?
  10. Orders After Hearing: I understand there is some confusion about orders coming out of J6.  During some of the pandemic, specifically when we were closed or strongly discouraging people from coming into the courthouse, as a temporary courtesy and accommodation to do our part to allow everyone to isolate as much as needed but still have access to justice, the Clerk’s office would either email or mail a conformed copy of a signed order.  However, since we resumed mostly normal operations several months ago, this process was discontinued, or so I thought.  There may have been some mixed messages along the way.

Effective immediately, we are returning to our former policy regarding copies of signed orders. Signed orders from Courtroom J6 as well as revised orders by email to Courtroom J6 will continue to be processed by the clerk at the Probate window.

Let me make clear that nothing has changed from pre-pandemic procedures regarding orders signed in the courtroom.  If a party or counsel wants a conformed copy or certified copy of an order signed in court, the person desiring the order should lodge a postage-prepaid, self-addressed return envelope and copies of the order to be conformed prior to the hearing.  If you file electronically, it is your responsibility to lodge the postage-prepaid, self-addressed return envelope and copies of the order to be conformed prior to the hearing.  This is a decades-old process that likely will not change until we adopt our new paperless case management system next year.  At that time, we will announce new procedures once they are developed.  This process is distinguished from revised orders requested by the judge to be emailed to the CourtroomJ6 email address.

The Clerk’s office will do the following:

* For orders submitted prior to the hearing, the Clerk’s office will mail copies as long as the attorney provides the copies with a self-addressed stamped envelope.  If they do not, they will need to obtain a copy from Records.
* Whenever Judge Lund orders an attorney to send a revised order by email to Courtroom J6, we will mail out one copy to the attorneys submitting the order as a courtesy since that process is electronic and is necessitated during the hearing itself.

If an attorney submits copies of the order only prior to the hearing (with no SASE), the conformed copies can be placed in the public pick-up bin. The public pick-up bin is box #11, mail carousel located in the clerk’s office, room 122.

I hope this clarifies the problems some have experienced in obtaining orders after hearing, particularly since there are still so many remote appearances.

1. Notice: Notice problems plague 70-80% of every calendar.
   1. Please pay particular attention to notice in every case, and a best practice is to BE SURE YOUR NOTICE OF HEARING AND/OR PROOF OF SERVICE IS FILED AT THE SAME TIME YOU GIVE NOTICE.
   2. Remember to use the new DE-115 Form for notice of 850-related petitions.
   3. I have asked the Probate Section of the Bar to develop an MCLE course on Notice issues in J6. I am happy to help in any way, and hope that it will be recorded so that lawyers can be referred to it in the future.
   4. Electronic Service: Please become acquainted with new CCP 1010.6(e) replacing Emergency Rule 12 concerning electronic service. See email from David Shea, Esq., attached hereto and a great example of best practices with electronic service.
   5. The following addresses some commonly occurring errors found in Item 8 of the Petition for Probate: Persons to be Named in Probate Petition(Judicial Council Form DE-111):

**1.** **Heirs of the Decedent.** Whether or not a decedent died with a will, Item 8 of the petition must contain the names **and relationships** of all of the decedent’s heirs-at-law. An heir-at-law is any person who would be entitled to distribution of a part of the decedent’s estate (including distribution by virtue of Probate Code §6402.5 if the decedent had a predeceased spouse) if the decedent died intestate (without leaving a will);

**2.** **All** **Persons Mentioned in Decedent’s Will or Any Codicil**. This includes all named contingent beneficiaries who may be entitled to share in the estate, and also includes persons provided for in the will but whose gifts have been revoked by a subsequent modification to the will;

**3.** **Deceased Heir or Beneficiary.** If an heir or beneficiary dies after the decedent, and a personal representative has been appointed for said person, the deceased heir or beneficiary should be listed in care of the name and address of the personal representative. If no personal representative has been appointed, the deceased heir or beneficiary should be listed as deceased, the fact that no personal representative has been appointed should be alleged, and the known heirs, devisees, and legatees of said deceased person should be listed and identified, or if none is known, the last known address of the deceased person should be listed. (See Cal. Rules of Court, rule 7.51, subd. (e)); if a beneficiary of decedent’s will died before decedent, see also Prob. Code §21110.) The date of death of the deceased heir or beneficiary should also be stated if known or reasonably ascertainable.

**4.** **Trustee Nominee.** Item 8 should name any nominated trustee of a trust created by the will;

**5.** **Beneficiaries of Testamentary Trusts.** The terms “all persons mentioned in decedent’s will or any codicil” and “named contingent beneficiaries” used above include beneficiaries named in testamentary trusts. It is not adequate to merely give notice to the trustee of a trust where beneficiaries or contingent beneficiaries are named in testamentary trusts;

**6.** **Trustees of Inter Vivos Trusts Who Will Receive “Pour Over” Gifts from Decedent’s Estate.** Item 8 on the petition requires the petitioner to list “all beneficiaries of a trust named in decedent’s will or any codicil in which the trustee and personal representative are the same person.”

**a. Notice**. Where a trust is a beneficiary of the will and the trustee is identical to the proposed personal representative, notice must comply with Probate Code §1208, subd. (b);

**7.** **Other Persons to be Listed in Item 8**.

**a.** **Named Executors**. Any non-petitioning executor, including alternate executors named in the will;

**b.** **California Attorney General**. The California Attorney General, where there is a charitable trust involved (Prob. Code §8111); and

**c. Foreign Consul Official**. The diplomatic or consular official of a foreign country maintaining an office in the United States if: (i) decedent is a citizen of the foreign country who died without a will or leaves a will without naming an executor, or (ii) it appears that property will pass to a citizen of the foreign country.

1. Local Cases of Note:
   1. Breslin v. Pacific Legal Foundation: 1. The Court has power to order parties to mediation; 2. If you are properly noticed and fail to appear at mediation, you could lose your rights if a settlement is reached without you.
   2. Friend v. Farrant: 1. Example of how a fiduciary should not proceed; 2. Noticed Sanctions of $1,000/day ($121,000 total) for failure to file accounting is approved.
   3. Leiper v. Gallegos: Further guidance on allocation of attorneys fees and costs under common fund theory.
   4. Karton v. Ari Design: Incivility can be the basis for reducing attorneys fees.