



2024 THROUGH THE LOOKING GLASS SYMPOSIUM

THE CURRENT STATE OF THE PROBATE COURT AND PROBATE CASE MANAGEMENT FOR COURTROOM J6

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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 motion; new conservatorships, Probate/Trust cases; Trial/Evidentiary hearings).
3. Meaningful MSCs with the judge to settle the case are much more “meaningful” if the parties have met and conferred well before MSC/Mediation.
4. No reservation of trial date – even for “just in case.” Trials/Evidentiary hearings only follow MSCs/Mediation.
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. Please make it easy for the Court to determine if there really is an emergency. A brief 1-2 page Declaration re: Urgency is very helpful and should, in a sentence or two, clarify why this matter is so urgent you should bypass all the due process procedures and safeguards to have your case heard quickly.
 - A. Ex Parte Emergencies: (actual examples)
 1. True Emergencies: Immediate medical treatment needed, pending house foreclosure a fiduciary recently became aware of, imminent deathbed situation. These can’t wait.
 2. 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.
6. Expect scrutinization of issues, witnesses, readiness and accurate time estimates at the time trials/evidentiary hearings are set.

7. Minimize continuances. Court 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.
8. Chambers conferences are encouraged when appropriate.
9. O.K. to call the judge (via secretary) to make appointments for chambers or telephone conferences at any point in the case to help settlement so long as all parties are represented (i.e. no ex parte communications).
10. The Court will make every effort to arrange for a Settlement Officer for appropriate cases to facilitate settlement.
11. Judge Pro Tems will no longer be authorized to set trials/evidentiary hearings in J6 or a civil courtroom.
12. 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.
13. "I do not set trials/hearings until I see the whites of your papers."
14. I do not have caps for approved attorney fees or paralegals, but all fees must be reasonable for the matter undertaken.
15. Cases will be called from easiest to hardest.
16. Asking for priority should be for true emergencies only and is strongly discouraged. O.K. to ask to be placed at the foot of the calendar.
17. Continuances prior to hearing should be made by contacting the judicial secretary via a faxed Request for Continuance form. The 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.
18. Demurrers, motions to strike, etc., will continue to not be recognized in probate proceedings. 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. Demurrers are ordered off calendar but will be deemed "argument on the objections."
19. Tentative rulings are usually available 2-5 court days in advance to give as much advance notice to a party to be able to correct deficiencies and avoid a continuance.

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: Be sure to use DE-115 form for notice. Also, be sure to notice any lenders or account custodians (banks) in the same manner as CCP 413.10. This does not mean that a summons must be served, but that the manner of service must be the same as for a summons (i.e. personal service, leaving and mailing copies, or by mail with acknowledgement of receipt. NOT by certified mail.)
 - B. CRC 7.705(b): “Notwithstanding the waiver of account, if the petition and report request 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.*”
 - C. Local rules on everything, particularly Spousal Property Petition attachments.
 - D. Electronics: The difference between electronic submissions (“e-filing”) vs. Courtroom J6 email address.
3. Because the parties and court will be prepared, expect the court to make decisions at each hearing.
4. I don't like to take matters under submission. If you don't explain it so I can understand it, you are going to lose. Tell me what you want succinctly IN YOUR PLEADINGS - and the authority you have supporting your position. I don't make up law, I apply and enforce it.
5. 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. Proposed Orders must be lodged at filing for every petition or motion. You do not need to put “Proposed” on proposed order submitted prior to hearing; in fact, I prefer the word “Proposed” NOT be included.
8. We should only try issues in each case ONCE.
9. 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 from the list maintained by the court.

10. The J6 email address is for orders after hearing 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 J6 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. "Order signed" in the reply email means it goes to my OUT box, not that it is downstairs for you to pick up that minute. Please give it until the next day for pick-up.
11. Accountings: Be sure to tell the story 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.

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 (10) court days prior to trial/evidentiary hearing. A deadline for filing trial briefs is usually given at the time the trial/evidentiary hearing is set.
4. Be prepared to provide ACCURATE TIME ESTIMATES for trials/evidentiary hearings.

V. TRIAL/EVIDENTIARY HEARING:

1. All trials and evidentiary hearings in J6 will occur on Mondays only (all day). 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 2-3 days. Any case that exceeds the time estimate in J6 will likely be mistried and sent to another judicial officer for retrial.
3. Currently, cases with more than 2-3 day estimates will be assigned to another judicial officer or assigned judge (i.e. a retired judge) for trial. The assigned judges available are excellent and experienced trial judges, but most are not former probate judges. Discuss challenges.
4. Don't expect to do discovery at the hearing/trial. Many cases can be heard based on declarations subject to cross-examination.

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 witness first.
7. Generally, parties must bring their own court reporter to all trial/evidentiary hearings except those in which a court reporter is mandated by law. Court reporter resources are very scarce in our county.
8. Exhibits At Trial/Hearing: Petitioner uses numbered exhibits at trial; Respondent uses lettered exhibits at trial. Be sure to bring to your trial or hearing an exhibit book for yourself, (each) opposing counsel, witness stand, judge, and judicial assistant. All original exhibits should be in judicial assistant binder. If there are more than two parties presenting evidence, prior to trial/hearing you will need to figure out a system among counsel to separately identify exhibits from additional parties (i.e. not the same numbers or letters used by petitioner and respondent).

VI. POST-TRIAL MOTIONS:

1. Most long cause trials set before 2023 were assigned to a Civil Department judge. For those cases only, if a long-cause case is tried in a civil courtroom and you are filing 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. Role of Legal Research/Probate Examiner in the Court's deliberative process.
 - A. There are three attorneys filling these roles, and all have at least a decade of probate experience. Very talented and specialized.
 - B. Legal Research has been tasked with ensuring all petitions and notices conform to the law.
 - C. They prepare 2-5 page workups on every case at every hearing with a recommendation for a tentative ruling.
 - D. The Court then reviews, modifies, and publishes the tentative ruling in all cases except review hearings in conservatorships, which the Probate Examiner issues.
 - E. We often discuss your cases when guidance is needed from the Court.
2. Orders After Hearing: I keep working on this with staff for a quick turnaround. It leaves J6 same day of hearing, and J6 email address as soon as you see "Order signed." Sandy takes them down daily too. Please let your VCBA Bar Leadership (Sasha Collins or Katie Becker) know if you

- are not getting your orders within a few days of the hearing; that is the only way I will find out and will be able to fix it.
3. Consider filing EFS-005-CV in guardianships and conservatorships so we can send your documents electronically once we get that part of eCourt up and running. No ETA on that functionality, but it's in the works.
 4. From Sonia (Judicial Assistant) - Check the Zoom chat when you're appearing online. That's how the Judicial Assistant will primarily communicate with you. AND – Zoom – If you don't know how to use it, you lose it. That includes your clients and pro pers. Dress and act on Zoom as if you were in the courtroom.
 5. Court staff are not your babysitters. If you walk out or are not listening when your case is called, it will not be recalled.
 6. Reminder: Attach "new" (2022) DE-300 form for Petitions for Determining Succession to Real Property.
 7. Remember: When your estate will wind up in a trust, have your trustee file an Acceptance of Trust as the trustee. See Probate Code 10954 and 1209.
 8. Reminder: Don't include "overhead" in reimbursement requests (mileage, copies, postage, phone or fax charges and Lexis/Westlaw legal research software). See local rules.
 9. Interesting note: Guardian may not be discharged until one year after termination of guardianship. See Probate Code 2627 and CRC7.1007(a)(b).
 10. Amended, Corrected, and Nunc Pro Tunc orders. In the past, these orders would often come in without any explanation as to what was being amended, corrected, or the need for a "now for then" order. The Court did its best to figure out what the change was, which was time-consuming, but often necessitated Sandy making a call to counsel to find out. In all fairness to counsel, we learned that sometimes these orders had been accompanied by a cover letter explaining the reason for the submission, but they weren't included along with the file. So, we put in place a procedure that these types of orders now require a letter of explanation, which can also be in the form of an accompanying declaration or application, and it has made life much easier. Virtually at-a-glance, the Court knows what's being requested, and that little piece of information accelerates the entire processing of the order. So, thank you and keep it up!
 11. Responses/Objections to petitions: The Probate Code does not permit "answers" in these types of pleadings, usually to petitions. Instead, a response or objection is a proper reply to a petition. (Prob C. 1020, 1021, 1040-1046.) Therefore, please do not follow the typical civil-type admit/deny language as a Response. It is not helpful, and from these barebone statements, it is very difficult for the Court to determine exactly what Respondent/Objector is trying to communicate. Use the narrative in your Response or Objection.
 12. CRC 7.103 re Petitioner's signature on petition. Please read the rule of court. Most of our litigants are fiduciaries of one sort or another and,

therefore, must sign the petition. I usually accept the “verification” as their signature, but technically all should be signing the petition. I do not want to get into the business of determining whether your client is in the county or not at the time of signing.

13. The Walk-Thru Stipulated Petition process will remain indefinitely so long as Judge Lund remains the probate judge. Please see Judge Lund’s website, judgerogperlund.com, for more information on this procedure.
14. Procedural Suggestions:
 - A. 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

- B. For Proposed Orders in Accountings in conservatorships and Trusts, please include dates for the 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 hearing on _____, 9:00 AM, Department J6.

15. Informal Accountings: See local rules for a new procedure and form for informal accountings in smaller estates above \$15,000 statutory waiver limit.
16. Special Administrators appointed on ex parte notice should only be asking 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.
17. Settlements: Please remember to include “what happens next” language in the stipulation and order so that 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 the case closed? If the case is to remain on calendar, why? What issues remain for the court to monitor or determine?
18. Notice: Notice problems plague 70-80% of every calendar.
 - A. 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.

- B. Remember to use the new DE-115 Form for notice of 850-related petitions.
- C. 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.
- D. **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.
- E. 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.

19. **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 one hour for each for the task).

20. **My best advice re: Life Estates.** 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. In my experience, it never works.