

SUPERIOR COURT OF ORANGE COUNTY

PROBATE DIVISION

Trial/Hearing Rules for Probate

Judge: Mary Fingal Schulte, Supervising Judge

Judge: Randall Sherman

Judge: Cheryl Leininger

Clerks: Dept. L72, Alma Gutierrez (714) 935-7274

Dept. L73, Jodi Gamboa (714) 935-6050

Dept. L53, Carol Anderson (714) 935-7257

Reporters: Dept. L72, Lois Pardee (714) 935-6125

Dept. L73, Andrea Gaunt (714) 935-6796

Welcome to Probate. The Court recommends that all counsel and self represented parties read and familiarize themselves with Orange County Local Court Rules, Division 6 (Probate Rules) and Titles 3 and 7 of the California Rules of Court (Civil and Probate Rules, respectively).

To facilitate the progress of your case and assure its timely disposition, this Court has established the following guidelines:

1. Unless otherwise ordered by the Court, your case will proceed through three (3) court hearings;
 - A. A trial setting/evaluation conference;
 - B. A mandatory settlement conference;
 - C. A trial/hearing.

**RESOLUTION OF THE CONTESTED MATTER WILL NOT ALTER THE
PROCEDURE OTHERWISE REQUIRED TO COMPLETE THE
UNDERLYING PROBATE MATTER.**

2. The Court expects counsel for all parties to maintain regular communication regarding hearing dates, progress of the case and settlement possibilities.
3. The Court believes in cooperative discovery and expects counsel to communicate in order to reduce the need for discovery motions. The prevailing party on discovery motions will generally be awarded costs and attorney fees.

4. The Court requires written notice of all hearing dates unless waived by all counsel or self represented parties.
5. The Court accepts the standards of liberal amendment of pleadings and expects counsel in most cases to stipulate to amend pleadings with a minimum response time of ten (10) days.
6. Continuances of hearing dates (TSC, MSC, trial) are discouraged; counsel may not stipulate to continuances of any hearings without Court approval. A stipulation must be submitted with a place for the Court's signature.
7. To minimize telephone calls to the department, please consult the local Court Rules prior to calling. The Court expects counsel and parties to comply with all filing requirements and adhere to the time frames designated in the Civil Rules unless in conflict with an applicable Probate Rule

COUNSEL ARE REQUESTED NOT TO CONTACT THE CLERK TO INQUIRE AS TO WHETHER THE MATTER WILL BE HEARD ON THE DATE SCHEDULED FOR TRIAL. ASSUME THE MATTER WILL BE HEARD AS SCHEDULED.

8. Judge Schulte will give tentative rulings on law and motion matters, unless a temporary judge is assigned on a particular day. If the matter is resolved prior to the hearing date, please call the clerk or probate attorney (714) 935-8065 immediately to so advise.
9. In the event a case settles prior to a court hearing, parties must file a stipulation in writing signed by all the parties and counsel and in compliance with CCP Sec. 664.6 which expressly sets forth resolution of each pending petition; otherwise all parties and counsel shall appear to have the matter placed on the record, or resolved by such other order as the Court may direct.

THE TRIAL SETTING CONFERENCE/EVALUATION CONFERENCE

1. This conference is set by the Court at the first hearing in which the matter is at issue.
2. All counsel and self represented parties shall complete a Joint Case Management Statement and submit same to Department L72 at least five (5) calendar days before the hearing.
3. At the trial setting/evaluation conference hearing, the Court shall review the case with counsel and self represented parties to determine when a mandatory settlement conference shall be scheduled. The Court requires counsel who is completely familiar with the issues and the calendars of all counsel, parties and witnesses to attend all hearings on contested matters.
4. The trial setting/evaluation conference may be continued only with permission of the Court.

THE MANDATORY SETTLEMENT CONFERENCE

1. A mandatory settlement conference (MSC) shall be required in all contested cases.
2. A settlement conference statement must be lodged in Department L72 at least five (5) calendar days before the MSC. **DO NOT FILE THE SETTLEMENT CONFERENCE STATEMENT IN THE CLERK'S OFFICE.** Counsel must comply with California Rules of Court, rules 3.1380 (b) and (c).
3. Trial counsel and all parties must appear at the MSC unless excused by the Court on a prior written request with notice to all other parties.

ISSUE CONFERENCE (O.C.L.R. 317).

An Issue Conference, NOT INVOLVING THE COURT, will be required in all cases not less than ten (10) days prior to trial, at which time counsel are to meet and confer and execute necessary documents as listed below. Counsel for the Petitioner/objector shall arrange the Issue Conference at a mutually agreeable time and location. This rule does not apply to cases involving establishment of/or termination of a Guardianship or Conservatorship, but a trial brief is helpful to the court.

At the Issue Conference the parties shall:

1. Exchange exhibits and inspect documents and diagrams. The parties shall pre-mark all exhibits for use during the trial per the trial/hearing rules for Probate. See attached instructions in the trial procedures packet. The parties shall prepare a joint exhibit list.
2. Stipulate to all facts amendable to stipulation. Prepare a list of stipulated facts.
3. Prepare a pretrial statement of the case, per the attached.
4. Prepare a joint witness list, excluding the names of impeachment witnesses, if any.
5. Exchange all motions in limine, if any.
6. Exchange trial briefs, if any. Trial briefs should not exceed twenty (20) pages. Please provide an extra copy for the court.
7. Execute the Statement of Compliance. See attached.
8. Bring exhibit books on the day of trial. Do not file with the clerk.

The above items, including opposition to motions in limine, and the Statement of Compliance signed by all counsel, shall be filed by noon the Friday before trial, in Department L72.

NOTE: Failure to conduct the Issue Conference as required may result in sanctions pursuant to O.C.L.R. 381.

PRETRIAL STATEMENT

(Not applicable to cases involving establishment or termination of a Guardianship or Conservatorship)

By noon the Friday before trial, the parties shall file a Joint Pretrial Statement, or if after a good faith attempt, preparation of a joint statement is not feasible, separate Pretrial Statements. The Pretrial Statement shall follow the form and contain the captions and information as follows:

- (a) **Party**
The names of the parties or party in whose behalf the statement is filed.
- (b) **Substance of the Action**
A brief description of the substance of the claims and defenses presented and of the issues to be decided.
- (c) **Undisputed Facts**
A plain and concise statement of all material facts not reasonably disputable. Counsel is expected to make a good faith effort to stipulate to all facts not reasonably disputable for incorporation into the trial record without the necessity of supporting testimony or exhibits.
- (d) **Disputed Factual Issues**
A plain and concise statement of all disputed factual issues.
- (e) **Relief Prayed**
A detailed statement of the relief claimed, including a particularized itemization of all elements of damages claimed.
- (f) **Points of Law**
A concise statement of each disputed point of law with respect to liability and relief, with reference to statutes and decisions relied upon. Extended legal argument is not to be included in the Pretrial Statement.
- (g) **Previous Motions**
A list of all previous motions made in the action or proceeding and the disposition thereof.
- (h) **Witnesses to be Called**
A list of all witnesses likely to be called at trial, except for impeachment or rebuttal. Provide a separate copy of the Witness List for the Court's use at trial.
- (i) **Stipulations**
A statement of stipulations requested or proposed for trial purposes.

- (j) Amendments, Dismissals
A statement of requested or proposed amendments to pleadings or dismissals of parties, claims or defenses.
- (k) Settlement Discussion
A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.
- (l) Agreed Statement or Partial Stipulation of Facts
A statement whether presentation of the action or proceeding, in whole or in part, upon an agreed statement of facts, is feasible and desired.
- (m) Bifurcation, Separate Trial of Issues
A statement whether bifurcation or a separate trial of specific issues is feasible and desired.
- (n) Appointment and Limitation of Experts
A statement whether appointment by the court of an impartial expert witness and whether limitation of the number of expert witnesses is feasible and desired.
- (o) Claim of Privilege or Work Product
A statement indicating whether any of the matters otherwise required to be stated is claimed to be covered by the work product or other privilege. Upon such indication, such matters may be omitted subject to further order of the court at trial.
- (p) Miscellaneous
Any other subjects relevant to the trial of the action or proceeding, or material to its just, efficient and economical determination.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

CASE NAME: _____ Case No. _____

DEPARTMENT L72
STATEMENT OF COMPLIANCE

This Statement of Compliance shall be executed and filed by all counsel at the Pretrial Conference.

1. Counsel has inspected all exhibits and diagrams, the exhibits have been tagged and marked, and the exhibit list is ready for filing.
2. All counsel has prepared a Joint Pretrial Statement and have made a good faith effort to stipulate to as many documents, foundational requirements, etc., as reasonably possible.
3. Pretrial motions have been exchanged by all parties.
4. Once the trial starts, witnesses shall be available to fully use each trial day.
5. Parties have agreed on a division of reporter fees, which are due each day before trial starts.

_____, Csl. for _____ Date

_____, Csl. for _____ Date

_____, Csl. for _____ Date

_____, Csl. for _____ Date

_____, Csl. for _____ Date

_____, Csl. for _____ Date

TRIAL PROCEDURES

1. INSTRUCTIONS FOR PREPARING EXHIBIT LIST: The Court requests that counsel prepare a joint exhibit list, avoiding duplication and confusion with numbering. A blank exhibit list form is attached for your convenience. The Court provided form is to be used rather than pleading paper.

Complete the exhibit list as follows:

- (1) Case number
- (2) Case name
- (3) Type of hearing: Probate trial/hearing
- (4) Exhibit List of: Joint
- (5) Type an "X" in the box marked Identification (ID)
- (6) In the column marked "###" type the exhibit number, beginning with number one. **Do not use letters for identifying exhibits.**
- (7) In the column marked "Description", include a brief, accurate description of the exhibit (i.e., "Letter of 1-18-91 from Smith to Jones", not "letter"). And indicate whether documents are originals or copies. See the attached sample exhibit list.

Do not be concerned with any other items contained on the exhibit list form.

2. INSTRUCTIONS FOR PREPARING EXHIBIT TAGS:

The Court requests that counsel prepare and attach exhibit tags to the exhibits, corresponding to the exhibit list. Four blank exhibit tags will be provided for copying and for your convenience.

Before filling in the "Exhibit No." make copies of the exhibit tags and complete the tags as follows:

- (1) Type an "X" in the box "identification."
- (2) Type an "X" in the box "Joint."
- (3) Type in case number
- (4) Type in case name
- (5) Once you have copied the tags and cut them apart, number each exhibit tag to correspond with the exhibit list.

Affix the tag to the exhibit by stapling the tags to the upper right hand corner. If you have any questions concerning the exhibit list or exhibit tags, please call the clerk in the trial department. See the attached sample.

NOTE: UTILIZATION OF THE TERM ‘JOINT’ IN BOTH TAGS AND LIST IS NOT TO BE TAKEN AS A WAIVER OF THE RIGHT TO OBJECT TO THE ADMISSIBILITY OF ANY EXHIBIT AT TRIAL.

3. WITNESSES:

- a. It is the responsibility of counsel to arrange for the appearance of witnesses to avoid delay caused by witnesses who have been placed on call; to confer among themselves during the trial as to when witnesses will be needed; to advise the Court at the earliest opportunity of any anticipated problems with the presence of witnesses and advise witnesses of the appropriate manner of testifying.
- b. If a witness, expert or percipient, will use documents other than exhibits in evidence or marked for identification by the clerk while on the stand, counsel must arrange for the prior examination by all other counsel of such documents during a time court is not in session, to avoid delay.

4. TRIALS:

- a. Prior to trial, the Court may confer with counsel in order to focus the case for trial.
- b. The Court expects counsel, parties and witnesses to be prompt and to maintain proper courtroom demeanor.
 - (1) All witnesses are to be addressed by last name.
 - (2) Objections, statements, and arguments are to be addressed to the Court rather than opposing counsel.
 - (3) COURTESY TOWARD EVERYONE IN THE COURTROOM WILL BE EXPECTED WHETHER OR NOT THE COURT IS IN SESSION.
- c. All parties are responsible for paying in advance all reporter per diem fees each day of trial. See attachment “Notice to Counsel Re: Trial Fees.”

JURY TRIALS

In certain cases Jury Trials are permitted, and shall be conducted according to Law and Procedure relating to the Trial of Civil Actions.

Counsel and parties are referred to Probate Code Sections 7200, 8252, 11704 in Probate matters and Probate Code Sections 1452 and 1827 in Conservatorship matters. See also CCP §§592 et seq.

If a jury trial is appropriate, the trial will be conducted in the Central Justice Center.

At the Trial Setting Conference, this Court will instruct counsel on the appropriate procedures to insure trial readiness, and a Pretrial Conference will be set in Department L72 at least two (2) weeks prior to jury trial to insure that all documents (witness list, instructions, proposed exhibits, statement of the case, etc) are lodged with the Court.

The case will thereafter be transferred to the courtroom of the Supervising Judge of the civil panel for trial assignment.