

FROM THE PROBATE SECTION...
COMMON ITEMS OF CONCERN IN OUR PROBATE COURT
BY AMBER RODRIGUEZ

Most of you know by now that in early October, Judge Reiser retired from his long-held position on the Probate bench. Judge Roger Lund has taken his place and has kept the court running smoothly during the transition. There are, however, a few items that have caught his eye and need to be kept in mind if you appear in Department J6, our Probate Court.

First, the use of courtroomj6@ventura.courts.ca.gov email address needs to be used respectfully and only by invitation. You cannot use the J6 email address to submit items that have not been specifically authorized by the court. In addition, if you have requested that you be permitted to submit a proposed Order to Judge Lund using the J6 email, you must submit that email within 48 hours of the hearing. Otherwise, the proposed Order must be submitted via the probate clerks using the standard process.

During his tenure, Judge Reiser, working with the local bar, reviewed, revised and updated our Local Rules extensively. The extensive updates during his tenure set forth guidelines for the submission of proposed Orders. First, a proposed Order is required to be lodged prior to the hearing itself (VCSC Local Rule 10.00.D.1). If it is necessary to submit a proposed Order to the J6 email, and only after invitation by the court, VCSC Local Rule 10.00.D.2. limits the time to submit the email to 24 hours post-hearing. Thus, Judge Lund is really giving us a bit of extra wiggle-room by allowing us 48 hours to electronically submit our proposed Orders.

We are encouraged to not only lodge a proposed Order prior to the hearing, but to also bring a hard copy with us to our appearance. In that way, both you, your clients and the court can more quickly obtain and process the Order. If only minor changes are necessary, it may be possible to have the Order modified in court.

Finally, in regards to the use of the J6 email, everyone is reminded that under our VCSC Local Rules, “any such post-hearing electronic submission shall show upon its face an electronic copy delivered to all counsel of record and to all self-represented litigants who have formally appeared or requested special notice.” Please be certain to include all such persons on your email to the court to assure there are no ex parte communications.

Another issue which was raised by some of the probate attorneys who frequently litigate in Ventura County is the concern regarding Post-Trial Motions. Essentially, when a case is assigned out to another court-room for trial (i.e. “across the River”), there has been some confusion and lack of consistency regarding how Post-Trial Motions are to be handled. Judge Lund reviewed this issue and was presented with a list of the most-common Post-Trial Motions.

Effective immediately, the court staff will set a date in the civil department where the case was tried when the motion is presented for filing. To assist the clerks in recognizing the various Post-Trial Motions, the court requests that attorneys add "POST TRIAL MOTION" in the caption and the courtroom number where the motion is to be heard. The clerks will then look for the next available date for that judge.

There will be a slight exception regarding a Motion for New Trial. A hearing date will NOT be assigned when the motion is filed. Those items will be sent to the person responsible for calendaring within the trial courtroom to determine when it should be calendared as there are specific parameters for those hearings set forth in CCP 659. That person will then calendar the Motion for New Trial and give notice.

The next issue which seems to need our attention is regarding the new notice requirements for Probate Code section 850 petitions. The Judicial Council form has not yet been updated to reflect the new notice requirements that went in to effect on January 1, 2018. Thus, in order to be compliant with the new notice requirements, it is necessary to manually insert the statutory language on to the Judicial Council notice form. The changes to section 850 can be found at Probate Code §851(c)(1) and §851(c)(3). Without this additional language, the court will likely need to continue your 850 hearing, even if the Petition itself would otherwise be approved.

Lastly, you may want to review the Ventura County Superior Court Local Rules by going to ventura.courts.ca.gov. Click on the "Court Resources" tab, then on "Local Rules." There you will find the updates and revisions schedule to take effect on January 1, 2019. Several effect the probate bar, including updates to our local Care Plan/Status Report (VN 233).

I hope this information is helpful and allows you to more effectively assist your clients. If you have a particular issue that needs to be addressed, please feel welcome to let me know.

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