

2020 CHANGES AND UPDATES IN THE PROBATE WORLD

BY AMBER RODRIGUEZ

We have quite a few changes upon us this year for our Probate section, both at the State level and locally.

Often, extensive changes to the California Probate Code have a common thread, such as when the Indian Welfare Act was incorporated into our Probate Code, as well as when the Domestic Partnership Act was put in to place. The “theme” this year (i.e. item most amendments and/or new sections address) is the new, periodic adjustments to the Small Estate maximum. This includes uncollected payroll, personal and real property numbers. The most commonly used number (for Small Estate Affidavits) is now \$166,250, effective January 1, 2020 (previously \$150,000). The adjustments will now be made every few years using the Consumer Price Index.

Probate Code section 890 is the new code section addressing the periodic adjustments to the small estate numbers. All the 13000 et al section amendments primarily address the periodic adjustment issue, as well.

In addition to the small estate numbers, we have some new code sections of interest.

For conservatorships, we have 2640 (c), 2641 (d) and 2541.5. Probate Code Section 2541.5 changes the evidence standard for a conservator to be granted authority to remove a conservatee from their personal residence. The evidence standard has been changed from a preponderance of the evidence to a clear and convincing standard of evidence. Probate Code sections 2640 (c) and 2641 (d) address the use of government benefits to pay attorney and conservator fees.

For drafting and litigation, we have 21380(a)(4) and 21611(d)(1). Probate Code section 21380(a)(4) expands the categories of persons to which the presumption of a donative transfer applies. Probate Code section 21611(d)(1) changes the definition of an omitted spouse to eliminate the “loophole” previously used when a marriage occurred shortly before death in a situation that would have otherwise been subject to a donative transfer presumption.

Regarding updated and new judicial council forms, there are just a handful. Most notably, we have the new DE-115, which is to be used when giving notice in a probate or trust matter regarding a section 850 petition. Please note that a separate form is required to confirm proper personal service has been completed. The code sections and form numbers are indicated on DE-115.

Other forms that have been updated include DE-120 and all the Small Estate forms.

On a side note, official legislation is on the horizon for electronic Wills in California. Given the legislative cycle, it is possible those changes may be in effect as soon as January 1, 2021. These new guidelines will have a significant impact on how we handle and identify valid Wills and other testamentary documents. Local Rules will likely need to be updated and adjusted to accommodate the new electronic Will provisions, once effective.

Our Local Rules have also undergone some changes. The local rules regarding electronic filing are one of the rules which has been updated. Quite a few items listed on the “exceptions” portion are either

specific to Probate or frequently used in probate matters. That list should be reviewed prior to e-filing any document to assure the filing will not be rejected.

While there were not any updates made specifically to the Probate, Conservatorship and Guardianship section of our Local Rules, it is anticipated there may be a few in the next cycle (effective July 1, 2020). Updates to our Local Rules can be viewed online through the Ventura County Superior Court website.

Amber Rodriguez is the Chair of the Executive Committee for the Estate Planning and Probate section of the VCBA. Her practice focuses on Probate and Trust Litigation and Administration, Estate Planning and Conservatorships. She can be reached at arodriguez@estateattorneycalifornia.com, or you can visit her website at estateattorneycalifornia.com.