Chapter 1

General Information

Counsel are advised to refer to the rules applicable to particular proceedings in addition to the general information provided in this chapter.

RULE 600. APPLICATION

The provisions of this division govern all probate matters where not inconsistent with law or with the California Rules of Court.

In addition to these Probate Rules, attorneys and parties appearing without attorneys shall comply with all the provisions of the California Rules of Court and all other Orange County Rules of Court and Policies.

RULE 601.01 FILING PROCEDURES, HEARINGS, TELEPHONE APPEARANCES AND TELEPHONE CALLS TO COURTROOM CLERKS

All documents and papers must be filed in the Probate Division of the Clerk's Office. Orders and ex parte petitions must be left in the designated area of the Clerk's Office for review. Documents and papers are not received in the courtroom.

Probate matters will be calendared for hearing by the Probate Division of the Office of the Clerk as determined by the supervising probate judge. All petitions and applications which require a hearing will be assigned a calendar date, time and department upon being filed. Any request for early setting must be approved by the court and will be granted only for good cause.

The calendar date, time and department must be written in pencil in the upper left-hand margin of all subsequent documents (such as supplements, proofs of service and notices) which relate to a matter on calendar, so that the Clerk's Office will be aware that the document needs to be promptly processed. Documents pertaining to matters on calendar must be filed no later than 4:00 p.m. four court days before the hearing to allow the examiner and court sufficient time to review the matters. Documents filed or submitted after that time will not be reviewed for the hearing and the matter will be continued or ordered off calendar.

Telephone calls are not received by courtroom staff while court is in session. All telephone requests to be heard at the end of the calendar (second call) must be received by the courtroom clerk before the scheduled calendar time. Telephone messages will be taken while court is in session concerning calendared matters and given to the clerk when the court adjourns.

Telephone appearances of counsel will be permitted in nonevidentiary probate hearings in accordance with Orange County Superior Court Rule 327. If a verified supplement must be filed to provide necessary information or other evidence must be presented, the request to appear by telephone will be denied.

Before the call of any calendar to be heard by a commissioner, all parties will be advised in open court that the matters on the calendar will be heard by the commissioner as temporary judge. Unless the Court is informed to the contrary, all parties shall be deemed to have stipulated that the commissioner shall so act as temporary judge, and the minutes will so read.

RULE 601.02 FORM OF PAPERS PRESENTED FOR FILING

Attorneys must use current Judicial Council or Orange County printed forms where same are provided.

Failure to use the correct form will result in a calendared matter being continued for an amended petition to be filed or new notice given using the correct form.

The attention of attorneys is called to Rule 201 of the California Rules of Court, as adopted by the Judicial Council. This rule must be followed.

RULE 601.03 LODGING VOLUMINOUS MATERIAL FOR REVIEW

Counsel may deposit voluminous documents that need not be part of the permanent court file but that are to be considered for their evidentiary value. These should be delivered to the courtroom clerk at least four court days prior to the hearing for the court's review and examination. The documentation will be returned to counsel after the time of the hearing according to arrangements made by counsel. Documents for which arrangements are not made will be destroyed 30 days after the hearing.

RULE 601.04 DOCUMENT COVERS

Document covers (sometimes referred to as "blue backs") are not used in Orange County. Documents may be returned if such covers are attached.

RULE 601.05 CAPTION OF PETITIONS

The caption of a petition must be all-inclusive as to the relief sought in the petition so that the matter may be calendared and posted properly and filing fees, if any, determined. The Clerk's Office is not required to read the petition to determine the adequacy of the posting.

RULE 601.06 APPROVED MATTERS AND TELEPHONE CALLS TO EXAMINERS AND PROBATE ATTORNEY

Under the supervision of the supervising probate judge, the probate examiners shall prepare each week an approved list of probate matters which can be heard without further testimony or appearance. When any matter which would ordinarily be approved is not approved, the examiner shall make a brief note to the probate judge stating the reason or reasons, and a copy of such note shall be sent to the attorney for the petitioner before the hearing. The probate calendar will be posted outside the courtroom approximately one week before the hearing.

If the examiner's note concerning a specific matter on calendar is unclear, attorneys, paralegals and probate secretaries for the moving party will be permitted to call the probate examiner during the time stated on the attorney's note. Only those matters specifically listed on the attorney notes are to be discussed with examiners. The examiners are prohibited from discussing other cases or other problems and are not permitted to give advice on questions of probate procedure or probate law. General questions on Orange County policies and procedures may be directed to the probate attorney between 10:30 a.m. and 11:30 a.m. Monday through Thursday by attorneys only if, after careful research of the Rules, Probate Code, and other relevant statutes and decisions, attorneys cannot resolve the questions.

RULE 601.07 CONTESTED MATTERS

The Probate Department may hear contested matters at such times as the court deems appropriate. Contested matters in which the trial time involved is less than one-half hour may be heard on the calendar date or continued to a definite trial date if they cannot be disposed of on the same day. Contested matters, when at issue and ready for trial, may be sent to Master Calendar to obtain a trial date.

RULE 601.08 CONTINUANCES

At the call of the calendar, if the matter is not ready for hearing or approved, it will be continued for at least five weeks. If, after continuance, the deficiencies which preclude the matter from being recommended for approval or heard have not been satisfied, the matter may be ordered off calendar unless a motion for continuance is granted by the court.

When a petition for probate is called for hearing, if an attorney or party appears and orally objects, and it is stated that written objections to the appointment or a will contest will be filed, the court will continue the hearing. If the written objections and/or contest is not on file or the objector fails to appear at the new hearing date, the matter will be recommended for approval or proceed to hearing, as appropriate.

At the call of the calendar, if objection is taken to any matter on the approved list, and petitioner or petitioner's counsel is not present, the court may continue the matter to allow the filing of written objections and giving notice thereof to petitioner. Such continuance shall be made, and petitioner or petitioner's counsel notified in any case wherein the court proposes to effect a substantial change in the relief sought.

RULE 601.09 ADVANCEMENT OF HEARING

When a probate matter has been set for hearing, or when it has been set and then continued to a definite date, the matter cannot be heard before the date set either by means of a new petition, an amended petition, or by a new notice, except by order of the supervising probate judge.

RULE 601.10 CONSOLIDATION WITH THE LOWEST NUMBER

Whenever it appears that two or more petitions with different numbers have been filed with reference to the same decedent, conservatee or minor, the court may, on its own motion, consolidate all of the matters with the matter bearing the lowest number.

Where a complete consolidation of proceedings under the Probate Code is ordered, the clerk, unless otherwise ordered by the court, shall file such consolidated proceeding and all subsequent papers relating thereto under the number assigned to the case which was filed first.

RULE 601.11 SIGNATURES AND VERIFICATIONS

All petitions, objections, responses, reports and accounts must be signed and verified as required by Probate Code Sections 1020-1023. Counsel are cautioned that signatures and verifications by an attorney are subject to significant limitations. An attorney can never sign or verify a petition, response or objection on behalf of a fiduciary appointed in the proceeding. An attorney cannot verify an account or report. The court will accept an attorney's signature and/or verification on behalf of a nonfiduciary party only if the document states that the party is absent from the county or states facts showing the party is unable to sign or verify for some other cause.

RULE 601.12 SERVICE OF CITATION AND SUMMONS

The Code of Civil Procedure sections on the manner of service of summons (Section 415.10 et seq.) are applicable in most cases to the service of process in probate proceedings. If the applicable provision of the Probate Code or these Rules requires personal service, substituted service under the foregoing sections of the Code of Civil Procedure may only be used with the court's specific permission, which shall be discretionary.

Publication cannot be ordered by the court until an affidavit of the failure of attempted service by one of the other methods of substituted service has been filed.

RULE 601.13 PETITIONS FOR EX PARTE ORDERS

All petitions for ex parte orders and supporting documents must be delivered to the designated area of the Probate Division of the Clerk's Office. All ex parte petitions which are not noticed or contested are to be left for review and action by the court. Generally, these ex parte orders may be picked up three court days following after 1:30 p.m.

Noticed and contested ex parte petitions (including petitions to appoint temporary guardians, temporary conservators and special administrators) will only be heard at 11:00 a.m., Monday through Friday in Department 703. All petitions, proposed orders and supporting documents must be delivered to the designated area of the Probate Division of the Clerk's Office no later than 2:00 p.m. the day before the hearing.

All ex parte petitions must be verified and accompanied by a separate order complete in itself (except for forms approved by the Judicial Council). An order is insufficient if it merely provides that the petition has been granted, or that the sale of property set forth in the petition has been approved.

Since no testimony is taken in connection with ex parte petitions, the petition must contain sufficient evidentiary facts to justify granting the prayer. Conclusions or statements of ultimate facts are not sufficient. A foundation should be set forth establishing the affiant's personal knowledge.

It is the practice of the court to require formal notice if it is not entirely clear that an ex parte order is proper, or if factual issues are presented in which the facts might be in doubt, and where it appears that other parties should have an opportunity to be heard.

If, because of the apparent emergency nature of the petition, the court elects to consider the matter ex parte, but the need for an opportunity to be heard is apparent, the court may require moving counsel to give four hours informal notice of the nature of the petition to counsel for other interested parties or, in the absence thereof, the other interested parties themselves, together with the proposed time and place of the hearing.

Before the hearing is held, moving counsel shall submit a declaration to the court setting forth facts relating to the efforts to give such notice, if any, or facts supporting the conclusion that it was impossible to give such notice. Where a four hour notice has been given, the documents must be delivered to the designated area of the Probate Division of the Clerk's Office no later than 9:00 a.m. on the day noticed.

All petitions for ex parte orders must contain an allegation that no special notice has been requested, or that any such notice has been waived (stating the persons requesting such notice), or that special notice is not required under Probate Code Section 1250. Any such waivers must accompany the petition.

In cases where pleadings are presented ex parte without attorney service buckslips, attorneys should provide self-addressed envelopes with sufficient postage to have all copies returned to them.

RULE 601.14 PROBATE ORDERS

Attorneys are to prepare all orders. If counsel wish to obtain orders on matters that are recommended for approval on the day of hearing, the orders on these matters must be delivered to the designated area of the Probate Division of the Clerk's Office no later than 12:00 p.m. (noon) the day prior to the hearing. The orders should be submitted separately and not attached to any other document or pleading.

All orders or decrees in probate matters must be complete in themselves (except for forms approved by the Judicial Council). They shall set forth all matters actually passed on by the court, the date of hearing, the relief granted, the names of persons, and descriptions of property or amounts of money affected, with the same particularity required of judgments in civil matters.

All orders must be prepared so that the general effect may be determined without reference to the petition on which it is based. No order shall merely recite that the petition as presented is granted.

All orders calling for distribution to the trustee of a testamentary trust must set forth all provisions of the will or codicil relating to the trust or trustees, in such a manner as to give effect to conditions existing at the time distribution is ordered. For example, pertinent provisions should be set forth in the present tense and in the third person, rather than merely quoting terms of the will verbatim. Counsel are advised to use caution in restating the terms of the will or codicil so as not to create new terms or to confer powers not granted by the court.

The signature line for the court should be as follows:

Dated:_____

_____
Judge/Commissioner of Superior Court

The signature line should never be on a page by itself. The signature line must always be at the end of the order and not followed by any attachment.

RULE 601.15 NUNC PRO TUNC ORDERS CORRECTING CLERICAL ERRORS

If, through any inadvertence, the minute order or the signed order or decree fails to state the order actually made by the court and such inadvertence is brought to the attention of the court by declaration, the court may make a nunc pro tunc order correcting the mistake. Points and authorities are not required.

The nunc pro tunc order must not take the form of an amended order and should be substantially in the following form:

In The Matter of	)	Case No.
	)	
	)	NUNC PRO TUNC ORDER
	)	CORRECTING (insert title
	)	of order being corrected)
_____	)	

Upon consideration of the declaration of (insert name of declarant), to correct a clerical error, the (identify the order to be corrected, giving the title and date the incorrect order was signed) is corrected by striking the following (here set out the matter to be eliminated) and by inserting in lieu thereof the following: (here set out the correct matter to be added).

This order is entered nunc pro tunc as of (here insert date the incorrect order was signed).

Dated:_____

_____
Judge/Commissioner of Superior Court

The original order is not to be physically changed by the clerk, but is to be used in connection with the nunc pro tunc order correcting it. To prevent further errors, a complete clause or sentence should be stricken even if it is intended to correct only one word or a single figure.

RULE 601.16 BONDS

If at any time the bond is insufficient, it should be increased. It is the duty of the fiduciary and counsel, if counsel is aware of facts requiring an increase in bond, to increase bond whenever necessary. The attorney shall cause the personal representative, conservator, or guardian to petition for an ex parte order for an additional bond, thereby increasing the bond to the amount required.

When a bond must be increased, the court favors the filing of an additional bond rather than a substitute bond. When the bond must be decreased, a petition for reduction of bond must be filed and set for hearing. The court favors the use of an order decreasing the liability on the existing bond rather than the filing of a substitute bond.

RULE 601.17 GENERAL INSTRUCTIONS/STATEMENT OF DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE

Orange County General Instructions to a Conservator and General Instructions to a Guardian are available from the Clerk's Office. The use of these forms is required except in conservatorships and guardianships of the person only. The Judicial Council form "Duties and Liabilities of Personal Representatives" must be used in decedents' estates. Before letters are issued, the general instructions or statement of duties and liabilities must be read, completed, and signed by the fiduciary and filed. The Social Security number and driver's license number of each fiduciary must be set forth.

This requirement applies to all fiduciaries including special administrators and temporary guardians and conservators of the estate. The Public Guardian and corporate fiduciaries are exempt from this requirement. The Public Administrator must complete and file the statement of duties and liabilities in decedents' estates, but the Public Administrator's Social Security number and driver's license number need not be set forth.

RULE 601.18 LETTERS

Notarization is not required of the written affirmation of letters by a fiduciary, whether subscribed within or without this state.

When multiple representatives are appointed by an order which directs that "letters shall issue to them", the clerk will not allow less than all to qualify and have letters issued separately. If qualification of less than all is desired, it must be provided in the order of appointment.

RULE 601.19 ATTORNEYS TO ANNOUNCE THEIR NAMES

To assure a correct record, all attorneys appearing at probate hearings are requested to announce their names and identify the parties whom they represent when they first speak. (For example: "John Doe, attorney for petitioner", or "John Doe, of Doe, Roe and Black, appearing for respondents Jack Smith and Alice Jones", or "John Doe, attorney appearing specially for Mary Roe, attorney for petitioner Alex Smith.")

RULE 601.20 ATTORNEYS MUST BE ADMITTED IN CALIFORNIA

There is no authority which permits an attorney at law who is not a member of the California Bar to appear as an attorney of record in a probate matter. But see California Rules of Court 983.

RULE 601.21 WITHDRAWAL OF ATTORNEYS OF RECORD

A. Substitution of Attorneys.

An executed substitution of attorney filed in a proceeding must be accompanied by a copy thereof for the court's use.

B. Motions to be Relieved as Counsel.

If an attorney wishes to withdraw from a probate proceeding as attorney of record for the estate representative or any other fiduciary, the attorney may file a motion or petition seeking such relief. The attorney must have a citation issued and served on such motion or petition directing the representative to appear before the court to show cause why the motion or petition should not be granted or why the representative has not taken the proper steps to complete his or her duties.

C. Required Declaration.

All motions or petitions to be relieved as counsel must contain a declaration stating the client's address at or near the time of filing. In most cases, the address can be obtained by a telephone call, by sending a registered or certified letter, return receipt requested, or by inquiry to the Department of Motor Vehicles or Registrar of Voters. The court must be satisfied that a diligent attempt has been made. Whenever the declaration shows that counsel is unable to locate the client after making a diligent effort, the client must be served in compliance with Code of Civil Procedure Section 1011 by serving a copy of the petition or notice of motion on the Clerk. This is a minimum requirement. Simply mailing the notice to the client's address in the file will not be sufficient.

D. Required Notice and Service.

If the motion or petition to be relieved is granted, the order relieving counsel shall be served on the client and all parties, in the absence of specific written waivers of such notice. The order shall state the client's last known address and telephone number.

Thereafter, service must be made upon the client at the address indicated in the order. Whenever the client's actual address is unknown to the moving party and the motion is granted, the order shall state that the client must be served in compliance with Code of Civil Procedure Section 1011.

RULE 601.22 LAW AND MOTION MATTERS

All rules of the Orange County Superior Court and of the California Rules of Court applicable to civil matters also apply in probate law and motion matters except all documents are to be filed in the Probate Division of the Clerk's Office. Documents are not to be filed at the calendar services window in the Clerk's Office.

RULE 601.23 GUARDIANS AD LITEM

The court, on its own motion or on the request of an interested person, may appoint a guardian ad litem in connection with Probate Court matters only (Probate Code Section 1003). The petition for appointment can be presented ex parte in accordance with the procedures for other ex parte orders, or may be set for hearing with appropriate notices given. A guardian ad litem may be appointed even where the person has a guardian or conservator of the estate if it is deemed by the court expedient to do so.

The petition should suggest an independent individual to be appointed as guardian ad litem, or request that the court choose an individual in its discretion. If left to the discretion of the court, the court prefers to appoint an attorney who can act as his or her own counsel.

The court shall determine fees to the guardian ad litem, as appropriate, and determine from what source such fees will be paid. The court prefers to award such fees at the termination of the guardian ad litem's representation.