

Chapter 1

General Information

Counsel and self represented parties are advised to refer to the rules applicable to particular proceedings in addition to the general information provided in this chapter and to refer to California Rules of Court Title 7- Probate Rules.

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, parties shall comply with all the provisions of the California Rules of Court and all other Orange County Rules of Court and Policies.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 601.01 Filing Procedures, Hearings and Telephone Appearances

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 Clerk's Office 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 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.

Telephone appearances will be permitted in accordance with rule 3.670, California Rules of Court.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 601.02 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

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Rule 601.03 Lodging Voluminous Materials for Review

Parties may deposit voluminous documents that need not be part of the permanent court file but that are to be considered for their evidentiary value. The documents may be submitted with a self addressed envelope with sufficient postage for mailing the documents or an attorney service pick up slip. The documentation will be returned to the parties after the hearing. Documents for which arrangements are not made may be destroyed 30 days after the hearing.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 601.04 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

Rule 601.05 Captions 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.

(Adopted effective July 1, 1992)

Rule 601.06 Approved Matters and Probate Notes

The probate notes will be updated to reflect any matters pre-approved by the court. To view notes go to www.occourts.org, click on probate and then on probate notes.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

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.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 601.08 Continuances

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

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filed, the Court may 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.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

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.

(Adopted effective July 1, 1992)

Rule 601.10 Consolidation with the Lowest Number

Whenever it appears that two or more petitions with different number 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.

(Adopted effective July 1, 1992)

Rule 601.11 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

Rule 601.12 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

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Rule 601.13 Petitions for Ex Parte Orders

The procedures for petitions for ex parte orders are posted at www.occourts.org, click on probate and then click on ex parte procedures.

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.

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.

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.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 601.14 Probate Orders

The party requesting an order must prepare the order unless otherwise directed by the Court. 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.

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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.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 601.15 Nunc Pro Tunc Orders Correcting Clerical Errors

If, through 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 if it is intended to correct only one word or a single figure.

(Adopted effective July 1, 1992)

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Rule 601.16 Bonds

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.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 601.17 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

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 issues separately. If qualification of less than all is desired, it must be provided in the order or appointment.

(Adopted effective July 1, 1992)

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.”)

(Adopted effective July 1, 1992)

Rule 601.20 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

Rule 601.21 Motions to Be Relieved as Counsel of Record

If an attorney wishes to withdraw from a probate proceeding as attorney of record for the estate representative or any other fiduciary, in addition to the requirements under CCP 284 and

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CRC 3.1362, 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 steps to complete his or her duties.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 601.22 Law and Motion Matters

All rules of the Local Rules – Superior Court of California, County of Orange, 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. The moving party should contact the courtroom clerk of the department where the matter is set if the law and motion matter is resolved prior to the date set for hearing.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

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 item in connection with Probate Court matters (Probate Code section 1003). The petition for appointment may 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.

(Adopted effective July 1, 1992; revised effective July 1, 2008)