



# Superior Court of California County of Orange

## PROBATE DEPARTMENT HEARING AND TRIAL GUIDELINES

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, once contested, your matter will proceed through three court hearings;
  - A. Trial Setting Conference (TSC);
  - B. Mandatory Settlement Conference (MSC);
  - C. Trial.
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 10 days.
6. Counsel may not stipulate to a continuance of a TSC, MSC or Trial without Court approval. A stipulation must be submitted with a place for the Court's signature. If all counsel/parties agree to the continuance, an ex parte application is not required. However, the stipulation should state the reason for the requested continuance.
7. The Court may provide tentative rulings on law and motion matters on the Court website. If the matter is resolved prior to the hearing date, please call the department where the matter is scheduled.

8. In the event a matter settles before a court hearing, the parties must file a stipulation in writing signed by all the parties and counsel and in compliance with Code of Civil Procedure section 664.6 which expressly sets forth the resolution of each pending petition; otherwise all parties and counsel must appear to have the matter placed on the record, or resolved by such other order as the Court may direct.

### **TRIAL SETTING CONFERENCE**

1. A Trial Setting Conference (TSC) may be set by the Court at the first hearing at which the matter is at issue.
2. All counsel and self-represented parties must complete a Joint Trial Setting Conference Statement (see optional local form L-1113) and file it at least five court days before the hearing.
3. At the Trial Setting Conference, the Court will review the case with counsel and self-represented parties to determine whether a settlement conference should be scheduled, and when trial should be set.
4. The Trial Setting Conference may be continued only with the Court's permission.

### **MANDATORY SETTLEMENT CONFERENCE**

1. A Mandatory Settlement Conference (MSC) will be required in all contested matters, unless excused by the court.
2. The court may order the matter to mediation pursuant to *Breslin v Breslin* (2021) 62 Cal.App.5<sup>th</sup> 801. The parties should be prepared to discuss the possibility for settlement.
3. A settlement conference statement must be filed and served at least five court days before the MSC. Since MSC's are conducted on Friday mornings, this means your statement must be filed no later than the previous Friday. Counsel must comply with California Rules of Court, Rules 3.1380 (b) and (c). Failure to comply with the court's order will result in the setting of an Order to Show Cause Why Sanctions should not be ordered pursuant to CCP 177.5 and CCP 128.5
4. Trial counsel and all parties must personally appear at the MSC unless excused by the Court on a prior written request with notice to all other parties.

## **ISSUE CONFERENCE**

An Issue Conference, NOT INVOLVING THE COURT, will be required in all cases not less than 10 days before trial, at which time counsel are to meet and confer and execute necessary documents as listed below. Counsel for the Petitioner must arrange the Issue Conference at a mutually agreeable time and location. This rule does not apply to cases involving establishment or termination of a Guardianship, but a trial brief is helpful to the Court in those cases, and all exhibits must be tagged per the procedure outlined herein. At the Issue Conference the parties must:

1. Exchange exhibits and inspect documents and diagrams. The parties must pre-mark exhibits for use during the trial per the attached instructions in the Trial Procedures section below. The parties must prepare a joint exhibit list. The parties are advised that the Digital Evidence Portal is now available and can be accessed on the court's website. Ask the court clerk if the Digital Evidence Portal will be utilized in your case.
2. Stipulate to all facts amendable to stipulation. Prepare a joint list of stipulated facts.
3. Prepare a Joint Pretrial Statement of the Case, as set forth herein.
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 20 pages.
7. Execute the Joint Statement of Compliance. See attached.
8. Prepare exhibit notebooks to be submitted at trial. Do not file them with the clerk.

The above items, including opposition to motions in limine, must be filed at least five court days before trial.

***NOTE:*** Failure to conduct the Issue Conference as required may result in sanctions.

## **PRETRIAL STATEMENT**

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

At least five court days before trial, the parties must file a Joint Pretrial Statement of the Case, or if after a good faith attempt preparation of a joint statement is not feasible, separate Pretrial

Statements of the Case. The parties are reminded the Joint Pretrial Statement is a summary of the allegations and defenses in the petitions and objections in the matters set for trial. It is not a trial brief. The Pretrial Statement must follow the form and contain the captions and information as listed below:

1. **Party**  
The names of the parties on whose behalf the statement is filed and counsel.
2. **Substance of the Action**  
Identify the petitions at issue and the filing date or registry of action for each petition. Provide a brief summary of the substance of the allegations and defenses presented and of the issues to be decided.
3. **Time Estimate**  
Provide the court with time estimates for trial and the manner in which each party and attorney intends to appear (ie. remotely or in person). The time estimate should include anticipated time for direct and cross examination of witnesses.
4. **Controverted Issues and Statements of Fact**  
The parties are ordered to prepare a plain and concise *List of Controverted Issues and Statements of Fact*. Include a statement of the requested prayers for relief.. For each listed issue, unless addressed in separately-filed trial briefs, this section to include the facts and legal authority supporting each party's position on that issue.
5. **Undisputed Facts**  
A concise statement of all material facts not reasonably disputed. Counsel to make a good faith effort to stipulate to facts not reasonably disputable for incorporation into the trial record without the necessity of supporting testimony or exhibits.
6. **Amendments, Dismissals**  
A statement of requested or proposed amendments to pleadings or dismissals of parties, claims or defenses.
7. **Bifurcation, Separate Trial of Issues**  
A statement whether bifurcation of specific issues is feasible and desired.
8. **Witnesses to be Called**  
A list of all witnesses likely to be called at trial, except for impeachment. Provide a separate copy of the Witness List for the Court's use at trial.
9. **Previous Motions**  
A list of all previous motions made in the action or proceeding and their disposition.

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE**

CASE NAME: \_\_\_\_\_ CASE NO. \_\_\_\_\_

***STATEMENT OF COMPLIANCE***

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

1. Counsel have inspected all exhibits and diagrams, the exhibits have been tagged, marked, and are “bates labeling” numbered. The exhibit list is ready for filing.
2. All counsel have 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 will 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.

\_\_\_\_\_, Atty for \_\_\_\_\_ Date \_\_\_\_\_

## TRIAL PROCEDURES AND INSTRUCTIONS

### 1. INSTRUCTIONS FOR PREPARING THE EXHIBITS:

The Court requests that counsel prepare a joint exhibit list. Exhibit numbers, not letters, must be used, and no exhibit number may be used more than once. Each side's exhibits should use a separate block of numbers. (For example, Petitioner 1-20; Respondent 21-40.) A blank exhibit list form is attached for your convenience. Each exhibit shall have a number tab.

The Court-provided exhibit list form, rather than pleading paper, is to be used.

Complete the exhibit list as follows:

- (1) Case number
- (2) Case name
- (3) Type of hearing: Probate Trial
- (4) Exhibit List of: Joint
- (5) If you have more than one exhibit notebook, indicate which volume contains the particular exhibit.
- (6) In the column marked “#” type the exhibit number, beginning with number 1. **Do not use letters for identifying exhibits.**
- (7) In the column marked “Description”, include a brief, accurate description of the exhibit (e.g., “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.
- (8) **Each exhibit with multiple pages shall have a Bates Labeling number on the lower right corner of each page. The bates labeling for each exhibit shall be numbered consecutively starting with the number 1. The numbers may be handwritten or typed.**

### 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. Exhibit tags are only required on the clerks set of exhibit binders if the matter involves an in-person trial. Remote trials.

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, of the first page. The exhibit tags are only required for the witness exhibit binder. If you have any questions concerning the exhibit list or exhibit tags, please call the clerk in the trial department.

### 3. **EXHIBIT NOTEBOOK/BINDERS:**

- a. **The Court's Digital Evidence Portal is now being used by some probate departments. If used in your case, the Digital Evidence Portal will be the location for the official court exhibits. Exhibit notebook/binders will still be required until further notice.**
- b. No exhibit or trial notebooks may be more than 2 inches thick. If you have more than five 2-inch notebooks of trial exhibits, the Court requests that you provide a digital copy of the exhibits.
- c. **Parties are encouraged to use a heavy duty 3 hole punch with 13/32" holes.**
- d. Please provide a complete set of your exhibit notebooks to each opposing counsel or self-represented litigant, a complete set for the court, and a complete set for the witness if live in-court testimony is taken. THE CLERK DOES NOT NEED A SET IF THE DIGITAL EVIDENCE PORTAL IS BEING USED.  
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.
- e. The outside edge or spine of the binder should identify whether it is petitioner's binder or respondent's binder. The range numbers for the exhibits in the binder should also be visible on the outside edge or spine of the exhibit binder **and** on the front cover of the notebook/binder.

### 4. **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 between or 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 to advise witnesses of the appropriate manner of testifying.
- b. If an expert or percipient witness 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.

5. **TRIALS:**

- a. The Court expects counsel, parties and witnesses to be prompt and to maintain proper courtroom demeanor, and to be appropriately dressed (no tank tops or shorts).
- b. Witnesses will not engage in any direct or indirect communication with anyone during their testimony other than those communications made on the record. No one shall be present in the room in which the person is testifying other than those known and authorized by the court.
- c. Witnesses shall not refer to any notes or other resource materials other than what is marked as an exhibit and available to all parties and the court.
- d. Remote hearings via Zoom require appropriate dress and appearance.
- e. All witnesses other than children are to be addressed by last name.
- f. Objections, statements, and arguments are to be addressed to the Court rather than to opposing counsel.
- g. All parties are responsible for paying in advance all reporter per diem fees each day of trial.
- h. If a document needs to be sent to the court during the trial, the parties shall use the email address – [probatecourtroom@occourts.org](mailto:probatecourtroom@occourts.org). This email is to be used only after the trial begins.

**SAMPLE**

**JOINT EXHIBIT LIST**

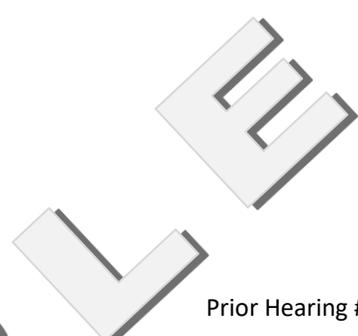
Case #: (1) A123456

Case Name: (2) Matter of the Estate of Smith

Court Clerk: \_\_\_\_\_

Type of Hearing: (3) Probate Trial

Exhibit List of: (4) JOINT



LOC	ID	#	EX	DESCRIPTION			Prior Hearing #
(5)		(6)		(7)			
Vol. 1		1		Copy of 1/31/90 letter to Smith from Jones			
		2		Copy of Agreement dated 2/3/90 between Smith			
		3		Original Promissory Note for \$123,456.00 dated 2/6/90			
		4		Copy of Trust Deed dated 2/6/90			
Vol. 2		5		15 original canceled checks from Jones to Smith			
		6		Copy of Notice of Default dated 3/19/92			
		7		Copy of Notice of Sale			
		8		3 photos of real property in foreclosure			

Date Received: \_\_\_\_\_ Received By: \_\_\_\_\_

1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_

**JOINT EXHIBIT LIST**

Case #: \_\_\_\_\_

Case Name: \_\_\_\_\_

Court Clerk: \_\_\_\_\_

Type of Hearing: Probate Trial

Exhibit List of: JOINT

Prior Hearing #

LOC	ID	#	EX	DESCRIPTION			

Date Received: \_\_\_\_\_ Received By: \_\_\_\_\_

1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_