



# 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 web site. 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 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 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. 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).
3. 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 all exhibits for use during the trial per the attached instructions in the Trial Procedures section below. The parties must prepare a joint exhibit list.
2. Stipulate to all facts amendable to stipulation. Prepare a list of stipulated facts.
3. Prepare a pretrial statement of the case, as set forth below.
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 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, or if after a good faith attempt preparation of a joint statement is not feasible, separate Pretrial Statements. The Pretrial Statement must follow the form and contain the captions and information as follows:

1. Party  
The names of the parties on whose behalf the statement is filed.
2. Substance of the Action  
A brief description of the substance of the claims and defenses presented and of the issues to be decided.

3. Relief Prayed  
A detailed statement of the relief claimed, including a particularized itemization of all elements of damages claimed.
4. Stipulations  
A statement of stipulations requested or proposed for trial purposes.
5. Undisputed Facts  
A plain and concise statement of all material facts not reasonably disputed. Counsel is expected to make a good faith effort to stipulate to all facts not reasonably disputable for incorporation into the trial record without the necessity of supporting testimony or exhibits.
6. Disputed Factual Issues  
A plain and concise statement of all disputed factual issues.
7. Amendments, Dismissals  
A statement of requested or proposed amendments to pleadings or dismissals of parties, claims or defenses.
8. Bifurcation, Separate Trial of Issues  
A statement whether bifurcation or a separate trial of specific issues is feasible and desired.
9. Agreed Statement of Facts  
A statement whether presentation of the action or proceeding, in whole or in part, based on an agreed statement of facts, is feasible and desired.
10. 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.
11. Previous Motions  
A list of all previous motions made in the action or proceeding and their disposition.
12. Miscellaneous  
Any other subjects relevant to the trial of the action or proceeding, or material to its just, efficient and economical determination.

**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 and marked, and 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 \_\_\_\_\_

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

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

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

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

## TRIAL PROCEDURES

### **1. INSTRUCTIONS FOR PREPARING THE EXHIBIT LIST:**

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. The Court-provided 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.

*Do not be concerned with any other items contained on the exhibit list form.*

### **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.

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. If you have any questions concerning the exhibit list or exhibit tags, please call the clerk in the trial department.

**3. EXHIBIT NOTEBOOKS:**

- a. No exhibit or trial notebook 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.
- b. 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 stand. **THE CLERK DOES NOT NEED A SET.** The clerk only needs the exhibit list, not the notebooks.

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.

**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. All witnesses other than children are to be addressed by last name.
- c. Objections, statements, and arguments are to be addressed to the Court rather than to opposing counsel.
- d. All parties are responsible for paying in advance all reporter per diem fees each day of trial.

**SAMPLE**

**JOINT EXHIBIT LIST**

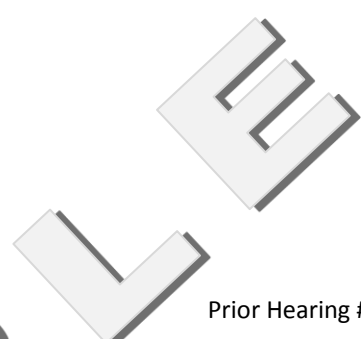
Case #: (1) A123456

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

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

Type of Hearing: (3) Probate Trial

Exhibit List of: (4) JOINT



Prior Hearing #

LOC	ID	#	EX	DESCRIPTION			
(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. \_\_\_\_\_