

JUDICIAL TIPS FOR FINE TUNING YOUR PROBATE PRACTICE

The bench officers, court attorneys, and court staff share a common interest with the lawyers and parties appearing on probate matters: that the proceedings should progress efficiently and fairly to a timely resolution. In aid of that common goal, we have compiled the following reminders, suggestions and FAQs that we hope the probate bar may find useful. This document is not intended to modify in any respect any provision of the California Probate Code, the California Code of Civil Procedure, the California Rules of Court, the San Luis Obispo Superior Court Local Rules or any order governing a particular probate case.

The quality of lawyering in San Luis Obispo County is generally quite good, and the guidance and suggestions we have included here should not be interpreted as implying otherwise.

Probate Practice Tips and Pointers

- File proof of service of notice; if notice timeline requirements have passed, submit waiver of notice.
- Submit proposed orders 72 hours or more before the hearing, fill out orders completely, and check orders for accuracy.
- Check your case to ensure all materials have been submitted prior to the deadline imposed by the Court; avoid waiting to review your filing for accuracy until the probate notes are posted.
- Review the online posted probate notes for deficiencies in your case filing, approvals, continuances.
- File a declaration if you are unable to file a critical document or pleading prior to the hearing.
- Follow the California Rules of Court regarding electronic signatures, i.e., italicized names are unacceptable signatures for many documents, especially when signed under penalty of perjury, and letters and bonds also require original signatures or electronically verified signatures.
- File your document before any court-ordered deadline.
- Check your document before it is e-filed. If the document has a coversheet on it, confirm the case name and case number correspond to the document you are filing.
- Review your document to make sure that all boxes are checked.
- Review your document to make sure you have cited legal authority.
- Review your document to make sure you have correctly included all attachments.

- Review your document to make sure you have addressed or acknowledged all of the probate notes. Responding to the probate notes by number is helpful.
- Always submit your proposed order with your moving documents.
- Filing multiple supplements or amendments to a petition makes it difficult for the Court to discern the ultimate requests in a petition. If two or more supplements or amendments to a petition have been filed, consider filing an amended document, as filing multiple supplements will cause a delay in reviewing your petition, as comparisons between the documents is time consuming.

Petitions for Probate

- *Notice* Research what form of notice you need to serve. Serve the appropriate notice type on the mandatory Judicial Council Form. File proof of service of notice be filed as soon as it is served. If an amended petition is filed, amended notice is required to be filed stating the petition has been amended. The petition will not be approved until amended notice has been effectuated. Waiting for the Court to ask for it will result in a continuance of your hearing.
- *Supplements versus Amendments* Every time a petition for probate is amended, amended notice and amended publication is required. (Cal. Rules of Court, rule 7.53.) Both documents must contain language stating the petition has been amended. What is a supplement? What is an amendment? (See California Rules of Court, rule 7.3.) A supplement must also be served on all interested persons.
- *Bonds* If a personal representative is an out of state resident, a bond must be posted even if the will waives bond, unless exceptional circumstances exist. Explain the exceptional circumstances.
- *Duties and Liabilities of Personal Representative Form* The form must include a legal physical address listed for the personal representative. Providing a post office box or an address in care of an attorney is insufficient. The goal is to provide a physical address for the Petitioner, so the Court can locate that person.

Common Errors

- *Petitions* All necessary documents, including proposed orders, with the corresponding petition. Filing documents close to a hearing date requires the Court to review the file again and again, thus taking time that could be used for other cases and prolonging the posting of probate notes.
- *Notice* A Notice of Hearing should be filed as soon as it is served- Waiting to file notices until after the probate notes are posted creates more work as another review of the file must be made. This results in a delay in posting the Probate Notes due to the constant changes.

- Notice errors All interested persons are required to receive notice at their legal physical address. Review California Rules of Court, rule 7.51, for notice in care of another.
- Typed signatures Please review California Rules of Court, rules 2.257 and 2.305, for signature requirements when e-filing. We receive many filings that are not from the filing party and not signed in conformity with the Rules of Court.
- Orders An order must match the corresponding moving papers. If there have been changes in assets, or otherwise, those changes must be explained before an order can be signed.
- Petition for Final Distribution An explanation on the change in form of assets, often by way of a loss and gain schedule is always needed, even if an accounting has been waived. Petitioners cannot decide to take fees on an inventory and appraisal value when gains and losses occur. Those changes must be disclosed. In addition, the prayer of the petition and corresponding proposed order must list the dollar value of each item to be distributed.

Frequently Asked Questions

- Why can't you look at my case early ahead of other matters? Each week is booked up with 35-40 cases, split between three calendars, plus order review, ex partes, and trial support. Staff plan their workload each week, months in advance, to finish the matters scheduled in the allotted time before the hearing. Research Staff cannot monitor e-file for new materials and then review those materials for cases coming up on the calendar that are more than seven days away. Research Staff cannot perform pre-reviews. In most instances, there is no wiggle room to review extra cases, as each week is already overbooked. Research Staff strives to finish all cases scheduled, and it should be noted that matters are rarely continued due to Research Staff being unable to complete a review when all materials have been timely filed.
- When do probate notes get posted? Probate notes are posted anywhere from two weeks to one day before hearings. Probate notes are provided as a courtesy. They are not mandatory and should not be a substitute for careful case management.
- Why is there such a delay in setting new cases? There are a few reasons: (1) the number of probate cases overall has increased; (2) many parties are not filing basic required documents needed in cases from the start, causing delays and continuances; (3) there are many parties who continuously fail to address prior probate notes or concerns raised by the Court, causing avoidable delays.

- Why are deadlines for responses to probate notes imposed? The goal is to avoid continuing matters. Every time materials are filed late, it is not possible for Research Staff to repeatedly review each case, communicate with the judge and repost the probate notes.
- What if a document cannot be filed by the court-ordered deadline? If a document cannot be filed by the court-ordered deadline, a declaration explaining why it could not be accomplished should be filed. As long as the Court knows the matter is being addressed, an OSC will not be issued. If nothing is filed before a court-ordered deadline, an OSC re sanctions will likely be issued and the party responsible may be sanctioned for failure to respond to the probate notes. In addition, the matter will be continued to the next available date so another timely filed matter can be heard.
- Does notice need to be provided to all interested parties? Generally, yes. Carefully review the code section upon which you are moving. Review the Judicial Council forms, and do not wait for the probate notes to identify who to serve or how to serve your document, as your matter will be continued. Proof of service of notice (whatever form you are required to file based on your research) should be filed as soon as service is effectuated. Most notice requirements in probate cases require a mandatory judicial council form. An untimely filed proof of notice will likely result in your matter being continued.
- Do I need to cite to statutory or case law in my pleadings? Yes! The Court receives numerous pleadings every month devoid of legal authority. Every pleading should have legal authority cited.
- Does a proposed order need to be submitted before the hearing? Yes! Proposed orders are required to be filed at the same time as the corresponding moving papers.
- Why do proposed orders take so long to review? There are two reasons orders will not be reviewed immediately: (1) you failed to file your order prior to the hearing. Due to workload constraints, orders are reviewed on certain days each week, as time permits. If your order is not in the file, it will not be reviewed until staff is again free to review orders. If your matter was approved “subject to”, it will take longer to review. Only a few matters are approved subject to another filing, and generally only when the filing is a minor concern.

Demurrers in Probate Cases

Goebner v. Superior Court of San Mateo County (Goebner) (2025) 110 Cal.App.5th 1105 holds as a matter of first impression that the Probate Code, not the Code of Civil Procedure, governs the timing for filing a demurrer to a Probate Code petition.

A foundational rule in probate matters is that the civil rules apply unless the Probate Code provides its own rule. (Prob. Code, § 1000 subd. (a).) The California Code of Civil Procedure has a meet and confer procedure prior to filing a demurrer, which must happen within thirty days after service of the complaint. (Code Civ. Proc., §§ 430.40, subd. (a), 430.41, subd. (a).)

The Probate Code, however, allows “[a]n interested person [to] appear and make a response or objection in writing at or before the hearing.” (Prob. Code, § 1043 subd. (d).) In *Goebner*, the trial court erred by applying the Code of Civil Procedure because the Probate Code specifically articulates the timing for demurrers in probate proceedings.

Calendar Settings have increased over the past 10 years

- 2014 average cases a week -27 for all calendars (27 x 49 weeks 1,323 Probate settings per year). The Court addresses approximately 100 ex partes a year.
- 2018 average a week-27 for all calendars. Started reviewing orders after hearing. Rarely closed for vacations/ had back up for vacations. (27 x 50) = 1,350. Reviewed around 150 ex partes a year.
- 2020 average cases a week-33 for all calendars. Closed for two months due to COVID issues and had special stipulated approval submissions for 16 months to try to compensate for work.
- 2025- average cases a week- 38 for all calendars. (38 x 47 weeks) 1,786 probate regular settings per year). Review orders and over 200 ex partes a year.