

February 2008 Bench-Bar Committee Announcements

The purpose of the bench-bar committee is to serve as a liaison between the probate bar and the probate court. Our goal is to promote the effective and efficient administration of matters pending before the probate court by encouraging communication between the bench and bar as to how that goal can be achieved. To effectuate our purpose, we have designated two liaisons to serve as channels of communication from practicing attorneys to the court. Between monthly meetings, our liaisons will gather suggestions, comments, and compliments for purposes of communicating them to the court at the monthly bench-bar meetings. The court, in turn, will gather monthly suggestions for presentation to the bar regarding steps attorneys can take to improve the efficient handling of matters before the court.

To that end, the liaisons for 2008 are Jerilyn Jones and Diane Ritchey-Andrews. Their contact information is printed on the handouts that have been placed on your chairs. The other current members of the bench-bar committee are Brad Lovelace (chair), Gary Jander, Alyssa Joyce, Jerilyn Jones, Luann Kelley, Mike Ditter, Merrienne Dean, Nancy Spector, Nancy Ewin, Terri Daniel, Judge Jessop, and Judge Kelety.

The probate examiners have prepared a tip of the month for February to help practitioners avoid defects. This month, the examiners have provided two tips. The first tip, in a nutshell, is to proofread before filing. A surprising number of defects are generated due to the fact that documents are not signed or dated, and although these types of inadvertent omissions can happen to the best of us, reducing the number of pleadings filed with these simple clerical errors will reduce delays in processing your petitions.

Next, another common defect pertains to fee declarations filed by attorneys or fiduciaries. Please check the statewide rules of court—especially Rule 7.702 and 7.756. As a friendly reminder, attorney fee requests must specifically identify each person who performed the work for which compensation is requested and must set forth each task that person performed and the time spent on each task.

The order clerk has also prepared a tip of the month to help practitioners expedite the processing of orders. This month's tip pertains to probate orders. Local Form PR-130 is required to be used for orders on probate accountings, on orders for distribution in probate estates, on orders related to compensation in probate proceedings, and on orders pertaining to status reports. This form may also be used in other contexts. Prior to filing an order for signature in probate proceedings, please check Local Form PR-130 to see if it applies. The form is available on the court's website.

In addition, it has come to our attention that there has been an increase in ex parte applications. Per local rule 4.7.6, matters which may be heard ex parte are those matters which are routine matters related to administration of a trust, a probate estate, or a conservatorship estate, such as:

- sale of securities

- sale of depreciating assets
- approval of investment plans in conservatorships
- increases in bond
- authorization to enter into an exclusive listing agreement, and
- appointment of guardians ad litem.

If the ex parte matter does not pertain to a routine probate matter, the application will not be considered unless it complies with Rule 3.1200, including the requirement for an affidavit containing competent testimony based on personal knowledge of irreparable harm or immediate danger. Ex parte applications will not be considered unless the affidavit provides sufficient evidence of a true emergency.

Also as a reminder, in some situations, your probate examiners might be able to pre-approve your matter. In uncontested matters involving:

- basic probate accountings where fee requests are limited to statutory fees only;
- waivers of accounting probate matters where fee requests are limited to statutory fees;
- petitions for probate;
- petitions to determine succession to real property;
- spousal property petitions; and
- petitions for appointment of a successor trustee

please be sure to check the examiners' notes before appearing at the hearing to see if your matter has been pre-approved. Of course, it is a good idea to always check the notes in any event, because the list I just recited is not exhaustive.

In the event your matter has been pre-approved, you do not need to call telecourt and you do not need to appear at the hearing. If objections are raised at the hearing, the court will send out a notice of hearing.

As some of you may have noticed, Judge Kelety has implemented a new procedure for expediting her calendar. In addition to using the continuance line that we are all familiar with, Judge Kelety has also implemented a second line for matters estimated to take two minutes or less. The continuance line will be handled first, followed by the second line for quick hearings.

Finally, as you all know, Judge Jessop has been moved to Department PC1, and Judge Kelety now presides in Department PC2. We have circulated copies of the new court calendar for your information and referral.