

Speaker Notes
**More Tips for Handling Conservatorship, Guardianships,
Estates, And Trusts in San Mateo County**
Peter MacLaren – May 10, 2015

1. When in Doubt, Ask.

- a. Email pmaclaren@sanmateocourt.org**
- b. I respond to every email, but do not respond to telephone messages**
- c. When responding to emails, I generally provide my best ideas on how a given matter can be handled with a given set of facts, but I cannot guarantee that a judge from my court, or anyone at a different court will see things the same way, especially if the other side objects.**
- d. If you email copies of papers you propose to file, I will advise if I see a problem with the papers. If you email ex parte papers that you are going to appear and present, I will tell you if I see a problem and since I will be familiar with the papers, your order should be signed as soon as you arrive ex parte. (See Ex Parte Tips below)**
- e. I appreciate emails containing courtesy copies of papers filed or lodged within a week of the hearing, especially last minute replies or objections or amended orders.**
- f. If a tentative ruling states that an order is needed, or that some document is needed, it doesn't mean you didn't send it, it means we either didn't receive it or lost it. If you email me a copy of the document or order, the order will normally be signed at the hearing. If you mail a document or order to the clerk's office after the hearing, it will take about a week or two to process.**
- g. Tentative rulings are posted around noon (sometimes as late at 3:30) on the day before the hearing. There is no requirement to call in if you intend to appear (unlike Law and Motion). Our court does not post notes, but we generally grant typical nonappearance matters such a probate petitions conditioned upon the filing of the necessary document. Once the appropriate document is filed, the order will be signed. If you bring the minute order, the order and file endorsed copies of whatever was required, you can get your order signed during ex parte hours.**
- h. Status: Where there have been several hearings on a matter, the court always appreciates some hint as to the current status, i.e. what the parties need or expect will occur at the next hearing.**

- i. Please resist the urge, or your boss's urge, to ask "questions" concerning a posted tentative ruling (Typical question: Help me understand how anyone who is not brain dead could make such a stupid ruling.) If you or your boss disagrees with a tentative ruling, appear and discuss the ruling with the person who made it and who has the power to change it, i.e. the judge.
- 2. Ex Parte Matters**
- a. Our court will handle just about anything other than the appointment of a general conservator or guardian, or a motion to be relieved as counsel, ex parte if the petition is supported by consents from all the parties entitled to notice.
 - b. Ex Parte hours are 2-3:30 Monday through Friday. Note however that since the clerk's office closes at 2:00, you need to file your papers with the clerk before they close, especially if you are bringing a new case that will require a new case number.
 - c. If an order issued during ex parte hours requires the issuance of letters (Administrator, Special Administrator, Executor, Conservator, Temporary Conservator, Guardian or Temporary Guardian) or certified copies of any order, we can escort the party back into the clerk's office after they are closed to provide whatever service they need.
 - d. Non-lawyers may act as runners to deliver ex parte petitions or proposed orders to the court during ex parte hours.
 - e. While there is a first time for everything, we have not, in the past ten years, denied any ex parte request to a person wearing an aloha shirt.
 - f. While we only run four 9:00 probate calendars a week, the volume of ex parte matters has increased to about 40-50 per week.
 - g. We grant one or more of the following matters ex parte every week:
 - 1. Heggstad Petitions with consents;
 - 2. Petitions to Modify Trusts with consents,
 - a. Note if Guardian ad Litem is needed, we do that ex parte as well and then grant the petition based on the consent of the Guardian ad Litem
 - b. Note: if a Guardian ad Litem is appointed we need to know that there is no conflict of interest between the GAL and the person they represent
 - 3. Appointment of successor trustees with consent of beneficiaries;
 - 4. Petitions for Preliminary Distributions of Estates with consents

5. Final Distribution of Estates with consents;
6. Approval of Settlements with consents;
7. Approval of Accounts with consents;
8. Spousal Property Petitions with consents of intestate heirs;
9. Temporary Guardianship or Conservatorship;
10. Elder Abuse TRO's;
11. Amendments to orders containing typographical errors;
12. Requests to Increase Bond;
13. Petitions for Instructions;
14. Appointment of Independent Counsel or Independent fiduciaries.

- h. If your attorney will be appearing ex parte to obtain a temporary conservatorship or temporary guardianship, the attorney needs to meet with the court investigator prior to appearing in the courtroom at 2:00. Best practice is to email copies of the papers to the court investigator ahead of time so that they can advise you of any issues before you get to court. The court investigators can be reached:

Julianna Weidner (lead):	650-261-5067
Ernie Bednar:	650-261-5074
Tamara Cady:	650-261-5069
Leticia Gonzalez:	650-261-5070
Jessica Moorner:	650-261-5072
Pam Herranz (Secretary):	650-261-5068

3. Continuances

- a. Continuances are routinely granted by email. To obtain a continuance, simply email pmaclaren@sanmateocourt.org , provide (a) the case number, (b) the current hearing date, and (c) a specific future hearing date. Please do not ask for non-specific date such as two weeks or 30 or 60 days.
- b. Continuances are not granted by phone. If a person calls for a continuance, we will request that they send an email so the court file will contain written evidence of the request.
- c. We do not issue continuances in the following situations for the following reasons:
 1. We will not continue a hearing without the petitioning party's agreement because the petitioning party has a right to have their matter heard, even though the result of the hearing may be to grant a continuance;

- 2. We cannot do “short” continuances of less than two weeks (don’t have the staff to turn a file around that fast) Continuances must be a month or more from the date of hearing;**
- 3. We can’t continue to a Thursday or a court holiday because we don’t have probate calendars on Thursdays and court holidays;**
- 4. We will take a matter off calendar if there have been multiple continuances and no hearing. We don’t have the staff to keep pulling files and preparing minute orders for cases that don’t go to hearing. The court will simply take the matter off calendar on its own motion without prejudice to the right of a party to set the matter for hearing if there comes a time when the parties actually want a hearing.**

4. Trials

- a. Our court’s liberal policy concerning continuances in general has been severely abused with respect to trial continuances. We have had a number of trial attorneys seek continuances the day of trial or less or the week before trial, which means the time reserved for the trial is lost, i.e. no other trial can be scheduled for that period due to the last minute request for continuance. Especially galling are the requests for a continuance on the day of trial so the parties can, for the first time, consider mediation.**
- b. The result is that continuances requested on short notice will be granted, but any new trial date will go to the end of the line and may end up on master calendar.**
- c. San Mateo County sets trial in Department 28 if a matter can be handled in five or less “half days” running from 2-4:30. Longer cause matters are set on master calendar. At the time of trial setting, Judge Miram will consider keeping a long cause matter if the attorneys can assure him that the matter will proceed expeditiously.**
- d. If the parties so stipulate, Judge Miram will consider holding settlement conferences for any matter set for trial.**
- e. Continuances for trials set in Department 28 should be requested by email. Continuances for trials set on Master Calendar can only be continued by ex parte appearances before the Presiding Judge.**
- f. If a probate matter is set for trial in Department 28, you should email the courtroom clerk, Ann Sievert at asievert@sanmateocourt.org**

1. One month before trial to confirm that the trial is going forward
 2. Two weeks before trial with a copy of your witness list and your exhibit list containing the exhibit letters or numbers you intend to use at trial
 3. One week before trial to arrange a convenient time to drop off five copies each of the documents listed on the exhibit list (a) the original exhibit to be entered into evidence and retained by the court; (b) one for the judge, (c) one for the witness, (d) one for opposing counsel, and (e) one for you. (Note if there is more than one other party involved in the trial, then additional copies will be necessary for each other party appearing)
 4. Three days before trial: a copy of any trial brief that you intend to file.
- g. Many attorneys turn what should be a short trial into a multi-day trial (disaster) by attempting to place an entire medical record into evidence as foundation for an expert opinion concerning capacity or susceptibility to undue influence. The best practice is not to admit any of the medical file into evidence unless it becomes an issue on cross-examination. Have the expert give each of his or her ultimate opinions (lack of capacity, susceptibility to undue influence, medical authority, need for dementia medication, need for dementia placement, etc.) and have the expert testify orally concerning the records he or she relied upon in reaching that opinion.
5. Specific Probate Petitions: Spousal Property Petitions
- a. Spousal Property Petitions: Four out of five Spousal Property petitions received by our court are defective. See Judicial Counsel Form DE-221 Petition and DE-226 Order.
 - b. Every spousal property petition needs to establish whether the subject property is community property or separate property and must provide a declaration (attachment 7 to the petition) containing the facts establishing the nature of the property (e.g. property was acquired during marriage with community funds, or property was inherited during marriage and is separate property)
 - c. The form of the petition and the form of order is determined by whether the property is community or separate. If the property is community property, then attachment 7(a) to the petition lists an undivided 50% interest in the specific items of property that will be deemed to pass from the decedent to the surviving spouse and

attachment 7(b) to the petition lists an undivided 50% interest in the specific items of property that will be confirmed as already owned by the surviving spouse as that spouse's community property interest. On the order, a different and somewhat contradictory number system is used such that the property listed in attachment 7(a) of the petition will be identified in attachment 5(a) to the order and the property listed in attachment 7(b) of the petition will be identified in attachment 7(a) of the order.

6. Specific Probate Petitions: Petitions for Approval of Accounts

- a. The primary reason for filing the account is to obtain a court order approving the account and the transactions disclosed therein. The most frequent mistakes made in petitions for approval of accounts is to fail to provide the following:
 1. The period of the account
 2. Any fiduciary fees that were paid during the period
 3. Any attorney fees that were paid during the period
 4. Any unusual items that may not be understood without some explanation.
 5. Any items that the fiduciary was unable to fully account for and therefore requesting that such matter be deducted from his or her fee. Courts have zero problem accepting this approach to a problem that would cost more to fix than the problem is worth.
 6. Assets that are not included in the account and the reason they have been excluded (e.g. not a trust asset)
- b. Note that failure to explain an unusual item or to disclose an attorney fee means that approval of the account will not necessarily protect the fiduciary from a subsequent demand for surcharge on that issue. The better the disclosure, the more likely that a subsequent petition for surcharge will be barred.
- c. Note that a fiduciary can file an account for any type of fiduciary relationship (trustee, conservator, guardian, guardian ad litem, attorney in fact under power of attorney, co-signatory of joint bank account) and any asset that the fiduciary exercises possession and control over including real property, bank accounts, investment accounts, and personal property (technically you could file an account concerning possession and control of a chair) and approval of such account precludes a subsequent claim for surcharge.

7. Specific Probate Petitions: SJIS Guardianship Petitions

- a. SJIS (Special Juvenile Immigrant Status) Petitions provide a procedure whereby a person under the age of 21 who is made a ward of the court (by establishing a guardianship) and who has the court may SJIS findings (essentially that the person under 21 was abandoned or abused by one or both parents) then SJIS will be awarded and the person under age 21 will receive fast tracked resident status and eventually citizenship.**
- b. The filings involve two parts: (a) the regular papers necessary to establish a guardianship, Petition (Judicial Counsel Form GC-210(P)) and Order (Judicial Counsel Form GC-240), and (b) the petition for SJIS findings (Judicial Counsel Form GC-220) and Order (Judicial Counsel Form GC-224).**
- c. The most frequent reason for denial is that the guardianship petition and/or petition for SJIS findings alleging abuse or abandonment are not served on the parents alleged to have abused or abandoned the minor.**
- d. Another reason that the petitions may be denied are that in the case of a petition brought shortly before the “minor” turns 21, the guardianship is neither necessary nor convenient, and in fact serves no practical purpose. A successful petition will emphasize the need for the petition aside from the need for SJIS findings. Note that the failure to support a minor over age 18 is not abandonment because there is no duty in California to support a child over 18 absent court order to do so.**
- e. In San Mateo, court investigators investigate and file reports for petitions for minors under 18 but not those over 18.**

8. Specific Probate Petitions: Special Needs Trusts

- a. The San Mateo Court has modified its policy concerning special needs trusts. We currently interpret Local Rule 4.94 entitled “Trusts Created Pursuant to Court Order” to require:**
 - 1. Provision for appointment of a successor trustee on approval of court**
 - 2. Requirement that all trustees except corporate trustee post bond**
 - 3. Requirement that trustee shall file reports and accounts to be reviewed in conjunction with any review of a conservatorship**
 - 4. Prior court approval for all acts which would require approval if performed by a conservator**

- b. Where a corporate trustee seeks approval of fees, the court will require some showing concerning the amount of work performed (i.e. estimated time records) to establish whether a percentage fee is reasonable.**

9. Ten Tips Regarding Papers Submitted for Filing

- (1) Originals should be clipped but not stapled so that they can be run through a scanner. Bottom tabs are okay, Side tabs are not.
- (2) Organize your documents by type with original and copies attached clipped together, not multiple sets containing one of each document. If you are appearing ex parte after the papers are filed, present one set containing one each of the documents to be considered, with the proposed order on top.
- (3) When possible use blue or colored ink for original signatures.
- (4) Never turn in loose unclipped papers to the clerk, as they are likely to get separated and lost.
- (5) As a general rule, relief can only be given on the 9:00 calendar where a notice of hearing is filed seeking the type of relief requested.
- (6) Keep document titles short and concise because the ICMS systems limits the number of characters available to describe a document and the clerks tend to shorten the title to save keystrokes e.g. Petition to account, suspend, remove, surcharge, return property, & enforce no-contest” or “Objection to removal, request to surcharge and allocate costs to objector” a long title will contain the first few word of the title plus “etc.” which gives the court no clue as to what is actually requested.
- (7) Recall that original petitions for appointment of conservator AND petitions for appointment of a successor require original plus three copies because one copy goes to the court investigators.
- (8) If a matter is set for an appearance and a tentative ruling is provided to show the court’s current inclination, the court may still be persuaded to issue a different order if you elect not to appear. You cannot lock in a favorable tentative by failing to appear. There have been an increasing number of hearings in which the parties are ordered to appear and nobody appears.
- (9) If you submit an order remember to submit copies and a return envelope unless you plan to attend the hearing and walk the original down to the probate clerks. If no copies are provided, the original will go in the file and you can pay records for a copy of the original once it is placed in the court file.
- (10) Be Patient. The clerks are aware that sometimes the lines in the clerks’ office are long and the wait can be considerable. Please be patient, the clerks have no control over the lines. They are short several positions, and are still trying to process matters as quickly as possible.

10. How To Get Help

a. Contacting the Court:

- i. Best Method: Email to pmaclaren@sanmateocourt.org
- ii. Second Best Method: Drop off Document with Probate Clerk
- iii. Third Best Method: Drop off Document in Courtroom 2F
- iv. Fourth Best Method: Telephone pmaclaren at 650-261-5095
- v. Worst Method: U.S. Mail addressed to Peter MacLaren

- b. Peter MacLaren answers every email but rarely returns telephone calls. He answers procedural questions, will review emailed ex parte papers. Will accept emailed copies of late filed briefs and orders.

11. New Telephone Numbers: We have a new phone system and new numbers

Research:

David Cairns:	650-261-5088
Peter MacLaren:	650-261-5095 (Cannot return calls)

Courtroom 2F

Ann Sievert:	650-261-5128 (51+Department Number)
Brian McKague:	650-261-5228 (52+Department Number)

Court Investigator:

Daivd Cherness:	650-261-5078
Julianna Weidner (lead):	650-261-5067
Ernie Bednar:	650-261-5074
Tamara Cady:	650-261-5069
Leticia Gonzalez:	650-261-5070
Jessica Moorner:	650-261-5072
Pam Herranz:	650-261-5068
Jackie Cameron	650-261-5674

Deputy Clerks

Tori Parham-Malcom: (Supervisor)	650-261-5100
Alessandra Robleto (Asst. Supervisor):	650-261-5100
Dorie Bonal (LPS)	650-261-5100
Jane Cogliati: (Calendar)	650-261-5100
Sulieti Finepolo (Clearance):	650-261-5100
Mia Ouranitsas (Counter):	650-261-5100

12. Most Frequent Mistakes In Orders Submitted to Court for Signature

- a. Real Property Descriptions insufficient to permit recording of order
- b. Probate Order (DE-140)
 - i. Line 2(c) Omission of date of minute order admitting will
 - ii. Line 3 Requires names of both administrators if co-administrators are appointed. Letters must also contain both names of both co-administrators.
 - iii. Line 3(d)(4) Expiration Date of Special Administrator
 - iv. Line 5(c) Where funds are to be placed in blocked account, language to effect that letters may issue without receipt avoids “catch 22” where receipt cannot be obtained until funds are deposited, but funds can’t be deposited until letters are issued and letters won’t be issued without a receipt.
- c. Final Discharge (DE-295)
 - i. Order for final discharge requires that the name of the fiduciary be inserted and a box checked of whether they served as personal representative, conservator, or guardian.
- d. Spousal Property Order (DE-226)
 - i. Line 5(a) Attachment should show undivided 50% interest in community property and 100%, 50% or 33% interest in separate property passing the surviving spouse by will or intestate succession.
 - ii. Line 7(a) Attachment should show undivided 50% interest in community property confirmed as already owned by surviving spouse.
- e. Guardian ad Litem Petition (GC-100)
 - i. Line 2 Please insert relationship of proposed Guardian ad Litem to person represented
 - ii. Line 3 Please attach statement explaining why there is no conflict of interest between the proposed guardian ad litem and the person represented.
- f. Temporary Guardian (GC-140)
 - i. Line 9: Date Temporary Guardianship expires
- g. Temporary Conservator (GC -141)
 - i. Line 14: Date Temporary Conservatorship expires

13. New Computer System: In June the Court will bring the Odyssey System on line. It will be a time to be extra careful with court filing. For best results file as far in advance as possible. When in doubt, request a continuance.