

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

### LEG15-02

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Title	Action Requested
Probate: Statements of Decision in Probate Proceedings	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Probate Code section 1046.5	January 1, 2017
Proposed by	Contact
Probate and Mental Health Advisory Committee Hon. John H. Sugiyama, Chair	Douglas C. Miller, Senior Attorney Legal Services Office douglas.c.miller@jud.ca.gov 818-558-4178

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### Executive Summary and Origin

Contested court trials in probate proceedings are governed by the Code of Civil Procedure to the extent not otherwise provided in the Probate Code. Section 632 of the former code (see Attachment A) provides for statements of decision upon the trial of questions of fact by the court but does not prescribe the extent of their applicability to probate proceedings, and there are no Probate Code provisions concerning statements of decision.

The Probate and Mental Health Advisory Committee proposes Judicial Council sponsorship of legislation that would add section 1046.5 to the Probate Code to prescribe when statements of decision must be prepared, may be prepared, or may be dispensed with and to provide a procedure for requesting them in contested court trials in proceedings under the Probate Code.

### Background

Except to the extent the Probate Code provides to the contrary, the rules of practice in civil actions, including Code of Civil Procedure section 632, apply to proceedings governed by the former code (Prob. Code, § 1000). No Probate Code provision currently addresses statements of decision, and with the sole exception of a trial to determine whether a conservatorship should be established if a jury is demanded by the proposed conservatee, all trials in proceedings under that code are court trials.<sup>1</sup>

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<sup>1</sup> See Probate Code sections 825, 1827, and 17006.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

The most significant probate matters—proceedings concerning the internal affairs of trusts, decedents’ estates, guardianships, and conservatorships—share unique characteristics that set them apart from regular civil actions governed by section 632. One of these is that each proceeding may be of interest to a number of persons, usually heirs and beneficiaries, family members of the principal, and creditors of and others in business with the principal. These persons are eligible, or may take steps to become eligible, to receive advance notice of important actions or events in the court proceeding, with an opportunity to support or oppose them by litigation filed in the proceeding before the actions or events can be taken or occur. Some of these persons may also be eligible to compel certain of these actions or events or otherwise to challenge the proposed or completed conduct of the appointed fiduciary. A person declining to join in one piece of litigation remains entitled to participate in a later one; he or she cannot be defaulted in the later one because of his or her decision not to contest the earlier matter.

Each of these opportunities may lead to contested litigation—a court trial. Over the entire life of a probate proceeding, often lasting for several years, numbers of these interested persons may elect to participate in some or all of these opportunities. During this period, several court trials may take place involving various configurations of the larger class of interested persons entitled to notice of filings in the proceeding.

Another characteristic of these probate proceedings is that the “one final judgment” or “single judgment” rule does not apply to many of the court orders that determine the litigation described above.<sup>2</sup> The Probate Code provides for a considerable number of appealable orders that may be entered not just at the end of the proceeding, but at earlier stages of it, including some at the very beginning.<sup>3</sup>

A third characteristic of some probate proceedings, especially guardianships and conservatorships, is that an increasing number of them involve proposed and appointed fiduciaries and other interested persons who are self-represented in litigation arising during the proceedings.

An additional circumstance affecting courts hearing probate calendars and trials in recent years because of judicial branch financial difficulties is a significant increase in the number of unreported hearings in probate matters.

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<sup>2</sup> See 7 Witkin, California Procedure (5th ed. 2008) Judgment, § 7, p. 551.

<sup>3</sup> Probate Code sections 1300 (all proceedings under the code), 1301 (guardianships, conservatorships, and other protective proceedings), 1301.5 (certain orders concerning multistate matters in conservatorships under the new California Conservatorship Jurisdiction Act, effective January 1, 2016), 1303 (decedents’ estates), and 1304 (trust proceedings).

## The Proposal

The factors mentioned above that are present in probate proceedings but not in the typical civil case to which Code of Civil Procedure section 632 applies have caused the advisory committee to propose legislation to add new section 1046.5 to the Probate Code.

Subdivisions (a) and (c) of the new code section would define the circumstances under which statements of decision would be required or permitted in probate proceedings:

- Statements would be required (except as noted below) in contested proceedings that could result in an appealable order under Probate Code section 1300 et seq.
- Statements could be dispensed with, at the discretion of the court, for all other contested proceedings and for very short contested proceedings involving appealable orders (those in which the trial is concluded within one calendar day or in less than eight hours over more than one day).

Very short trials—sometimes consisting of brief testimony by a single witness on one or two issues at the end of a probate calendar, or in an afternoon session following a morning calendar—are common. The court should have discretion to dispense with statements of decision in such matters.

Subdivision (b) would establish the following procedure for requesting and issuing a statement of decision in probate proceedings:

- A statement of decision must be requested “by a party appearing at the trial.” This text is proposed here to clarify that only the persons who are participants in the particular matter being tried, not the usually larger class of persons entitled to notices of hearing of petitions filed in the proceeding, may request a statement of decision.
- The statement of decision must be requested in writing. This requirement is recommended because an increasing number of hearings in probate matters are unreported.<sup>4</sup>

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<sup>4</sup> If this legislation is recommended by the Judicial Council and introduced in the 2016 Legislature, the advisory committee intends to propose and circulate for comment a written-request form for a statement of decision and a rule of court addressing additional procedural issues similar to existing rule 3.1590 but specific to probate proceedings, both effective on the same date as the anticipated legislation, January 1, 2017. The committee contemplates a form containing a one-sentence request for self-represented litigants, but with space that the requesting party or his or her attorney may use to specify anticipated controversial issues they desire to be addressed in the statement. Specification of issues would be optional with the requesting party, a departure from section 632, but a departure the committee believes is justified in these circumstances.

- The statement must be requested before commencement of the trial, defined by reference to Code of Civil Procedure section 581(a)(6) as before the opening statement or argument of any party or counsel or, if none, before the oath or affirmation of the first witness or the introduction of any evidence. This provision is inconsistent with section 632 but is recommended here because the requirement would alert presiding judicial officers before the start of trial that a statement of decision will be required. Greater reliance on notes taken by judicial officers during the trial in their preparation of statements of decision is necessary because of the increased number of unreported matters in probate proceedings. A judicial officer can be expected to take greater care in making and preserving those notes during the trial of cases in which he or she anticipates that a statement of decision will be required.
- The court must issue a written statement of decision if the proceedings are not reported. If they are reported, the court may elect to issue it orally on the record or in writing.

### **Alternatives Considered**

During the period 2012–2014, representatives of this advisory committee and its staff participated in a working group on statements of decision with representatives and staff of the Civil and Small Claims and Family and Juvenile Law Advisory Committees in an attempt to develop a uniform statement of decision practice and procedure for civil, probate, and family law litigation. Although some progress was made, including development of portions of the legislation recommended here that were accepted by representatives of the other participating advisory committees and also by the advisory committees of court executive officers and presiding judges, the global effort to unify statement of decision practice across all of these subject areas was unsuccessful.

### **Implementation Requirements, Costs, and Operational Impacts**

Courts would incur modest training and other costs in implementing this legislation. However, the greater clarity that would be achieved in court practice and procedure concerning statements of decision in probate matters would ultimately save judicial officer time and other probate litigation costs incurred by courts.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- What questions and concerns about statements of decision in probate matters does this proposal fail to address that should be considered?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- How well would this proposal work in courts of different sizes?

### Attachments

1. Proposed Probate Code section 1046.5, at page 6
2. Attachment A: Code of Civil Procedure section 632

Section 1046.5 of the Probate Code would be added, effective January 1, 2017, to read:

1 1046.5. Statements of Decision in Probate Matters

2  
3 (a) Except as provided in subdivision (c), in a contested proceeding under this code that could  
4 result in an appealable order described in Part 3 of this division, commencing with Section 1300,  
5 upon the trial of a question of fact by the court, the court shall issue a statement of decision in the  
6 manner provided in subdivision (b).

7  
8 (b) The court shall issue a statement of decision explaining the factual and legal basis for its  
9 decision if a statement of decision is requested by a party appearing at the trial. The request for a  
10 statement of decision must be in writing and made before the commencement of the trial, as  
11 defined in Section 581(a)(6) of the Code of Civil Procedure. The statement of decision may be  
12 issued in writing, or issued orally on the record if the proceedings are reported.

13  
14 (c) In a contested proceeding under this Code that is not described in subdivision (a) or in which  
15 the trial is concluded within one calendar day or in less than eight hours over more than one day,  
16 upon the trial of a question of fact by the court, the court need not issue a statement of decision.

## **Attachment A**

### **Code of Civil Procedure section 632**

In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision. The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. After a party has requested the statement, any party may make proposals as to the content of the statement of decision.

The statement of decision shall be in writing, unless the parties appearing at trial agree otherwise; however, when the trial is concluded within one calendar day or in less than 8 hours over more than one day, the statement of decision may be made orally on the record in the presence of the parties.