

DID YOU NOTICE THAT?

Who, what,
when and how
of proper notice
in trust and
probate
proceedings.

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Agenda

1. Due Process
2. Who is entitled to get Notice?
3. What are they supposed to get?
4. When are they supposed to get it?
5. How are they supposed to get it?
6. Common Mistakes and how to avoid them
7. Practical Tips for Success



Due Process Issues

- * The Due Process Clause of the United States Constitution prohibits deprivation of life, liberty or property without “due process of law.”
- * Procedural Due Process requires adequate notice and an opportunity to be heard.





Who is entitled to get notice?

Understanding the family tree and “interested parties”

THURSDAY, MARCH 24, 2022

Why is the family tree so important?

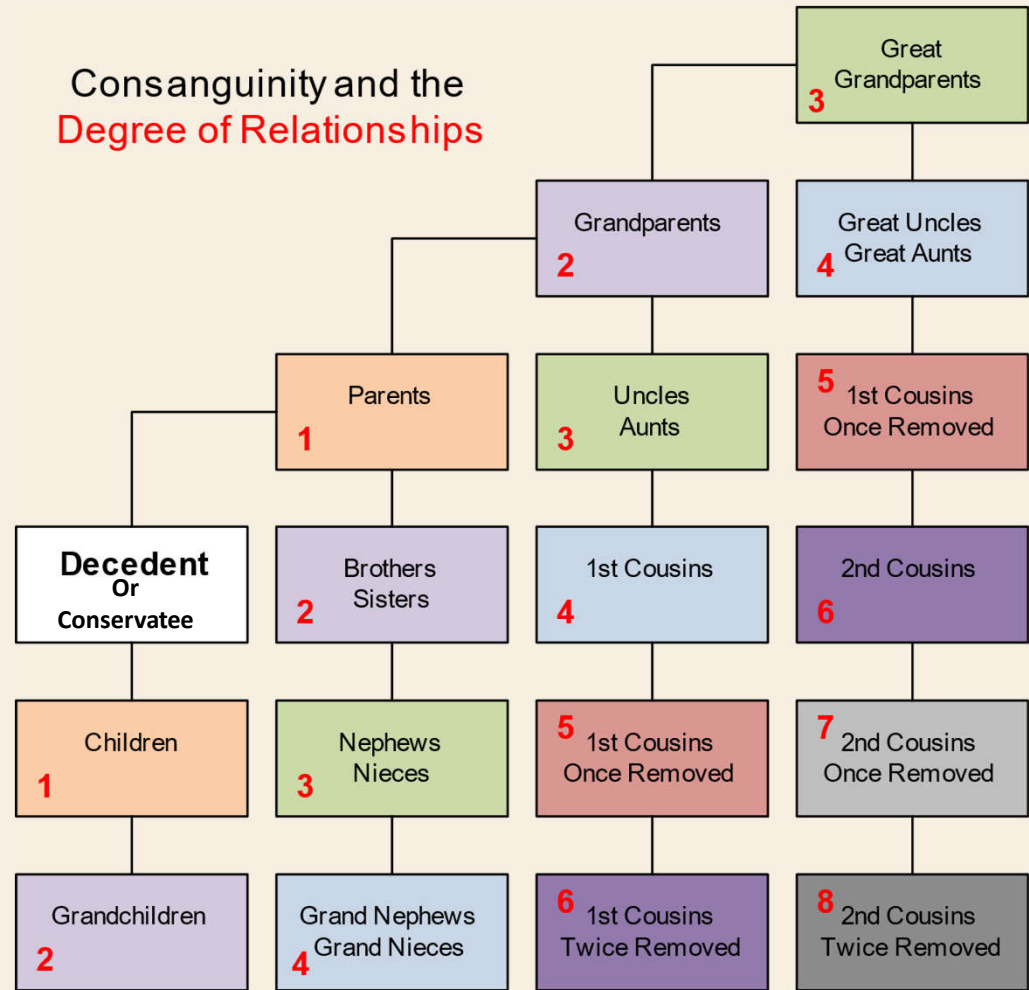
- In Trust and Probate matters, it helps you to identify the intestate heirs (e.g.: those who would inherit if the Decedent did not have a Trust/Will).
- In Conservatorship/Guardianship matters, it helps you to identify the first-degree relatives and second-degree relatives.



Understanding the family tree

The degree of kinship or consanguinity between two persons is determined by counting the number of generations separating them. Each generation is a degree. (Probate Code 13(a)).

Consanguinity and the Degree of Relationships



The “Interested Party”

- * Heirs, Devisees, Children , Spouses, Creditors, Beneficiaries, Persons having a right/claim against a trust or estate
- * Persons having priority of appointment as personal representative
- * Fiduciary representing an interested party
- * Is there somebody else who may be affected? If so, they count!

See: Probate Code §48



Help!
What do I send?

Your moving
papers/pleadings
+
The appropriate judicial
council form



When is that due again?

- * 15-day notices
 - * Initial Probate Petitions
 - * Probate Status Reports
 - * Petitions for Preliminary and Final Distribution
 - * Initial Conservatorship/Guardianship Petitions
 - * Probate/Conservatorship Accountings
 - * Substituted Judgment Petitions
- * 30-day notices
 - * §850 Petitions
 - * §17200 Petitions
 - * § 3100 Petitions
 - * § 3600 Petitions



So, how do I get the documents to them?

Personal Service

- Initial Conservatorships/Guardianships
- § 850 Petitions
- § 3100 Petitions

Via Mail (USPS stamped) *

- Everything else

* If a party is represented by counsel who has already appeared, send documents to counsel via email per CCP § 1010.6(e)(1) in addition to mailing documents to party directly.



Common Issues

MISTAKE/PROBLEM

Not being able to locate a person who is legally entitled to notice.

Not serving people directly.

Using the wrong Judicial Council form

Equating a Notice of Hearing with a Proof of Service.

HOW TO FIX IT?

File a declaration to show the court why you can't find them. Ventura Local Rule § 10.04(c)(1)

Put the person's name on the notice/envelope. Do not send "in care of" (CRC § 7.51(d)).

Review the judicial council forms closely (Samples provided with the materials)

These are not the same!

Common Issues

MISTAKE/PROBLEM

Not making it clear to the court that everyone was noticed.

Serving the wrong people

Giving 12 days notice instead of 15

Not filing your Notice before the hearing

HOW TO FIX IT?

Attach a family tree to your pleading if the family is large/complicated.

Make sure to update your service lists immediately after any change occurs. (Commonly happens when CAC has subbed in for the PD.)

Count to 15 correctly

Establish an interoffice rule that Notices are filed with the court the same day they are served.

Practice Pointers!

1. On your notice, include each person's relationship to help the court. Example: John Smith (Decedent's brother)
2. If there are deceased people, list them and whether or not they have issue. Example: John Smith (Decedent's brother, predeceased, no issue).
3. When a statute calls for notice to an "interested person" or an "affected person" don't spend time analyzing whether an heir or devisees interest may be affected, unless there is a compelling reason *not* to send the notice, just send it. Better to over notice than under notice.
4. On all Conservatorship matters, make sure to copy the Public Defender's office.
5. Make sure to work closely with your paralegals/office staff to make sure they know who the parties are who need notice.
6. If you somehow mess up notice, try to get a signed Waiver ASAP so you can proceed.
7. Make sure to carefully review your Judicial Council forms. One missed box can mess up your entire notice.



Summary

Adequate notice is a due process issue and must be taken seriously. Having to continue cases for insufficient notice is burdensome to the court and embarrassing to practitioners!

Spend some time reviewing the materials with your staff to make sure that they understand the importance.

Questions?

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