

Timing Is Everything

(A discussion of recent developments in legislation and case law that impact timing)

By Nicholas J. Van Brunt for

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Here's Your Top Ten List!

1. Service of Process in the Digital Age
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3. A New Pathway For Small(er) Estates
4. Timing Of Record Notice For Real Property Transactions
5. Kasem-Nichols-Rooney: Notice in Protective Proceedings
6. Statutes Of Limitation – Promises To Make a Testamentary Disposition
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Service of Process in the Digital Age

- SB 85 (Umberg) – Civil Actions; Service of Summons (Sent to Governor 9/2)

“Existing law prescribes specified methods for the service of a summons in a civil action. Under existing law, if no provision is made in statute for the service of summons, a court may direct a summons to be served in a manner that is reasonably calculated to give actual notice to the party to be served.”

“This bill would **also authorize a court to direct a summons to be served in a manner that is reasonably calculated to give actual notice to the party to be served** if a plaintiff, using due diligence, has been unable to serve the summons using methods prescribed by statute. **The bill would specify that service of a summons by electronic mail or other electronic technology is reasonably calculated to give actual notice to the party to be served.**”

Source: Legislative Counsel’s Digest for SB 85

Service of Process in the Digital Age

- SB 85 (Umberg) – Civil Actions; Service of Summons (Sent to Governor 9/2)
 - Old 413.30 -- Where no provision is made in this chapter or other law for the service of summons, the court in which the action is pending may direct that summons be served in a manner which is reasonably calculated to give actual notice to the party to be served and that proof of such service be made as prescribed by the court.

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 - *New 413.30 **If no provision is made in this chapter or other law for the service of summons, or if a plaintiff, using due diligence, has been unable to serve the summons using methods prescribed by statute, the court in which the action is pending may direct that summons be served in a manner **that** is reasonably calculated to give actual notice to the party to be served, **including by electronic mail or other electronic technology**, and that proof of such service be made as prescribed by the court.***

Notices In Probate – Virtual Representation Is Here!

- *AB 565 (Dixon) – Representation of Trust Beneficiaries [Signed by Governor 7/14/25]*
 - Existing law establishes procedures for the creation, modification, and termination of a trust, and regulates the administration of trusts by trustees on behalf of beneficiaries. Existing law requires a trust beneficiary to be provided notice of specified actions regarding the trust. Existing law sets forth requirements under which notice given to a specified person or class of persons is sufficient to comply with a requirement that notice be given to a trust beneficiary or a person interested in the trust.
 - This bill would delete that indirect notice provision and would instead provide that **notice given to a person authorized to represent and bind another person is sufficient to comply with notice requirements for actions regarding a trust**. If a person consents for a person to represent and bind them, the bill would require that consent to be in writing and would make consent binding on the represented person unless they object to the representation before consent would have become effective. The bill would prohibit certain persons from representing and binding another person for these purposes, and would authorize specified representative relationships and representation of successive interests.
 - *Source: Legislative Counsel's Digest for SB 85*

Notices In Probate – Virtual Representation Is Here!

- *Virtual representation is here!*
 - Section 15804 is repealed and replaced with the following:
 - 15804(a): “Notice to a person who may represent and bind another person pursuant to this section is sufficient to comply with a requirement in this division that notice be given to the represented person, and has the same effect as if notice were given directly to that represented person.”

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- *Who can serve as a virtual representor?*
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 - 15804(a): “Notice to a person who may represent and bind another person pursuant to this section is sufficient to comply with a requirement in this division that notice be given to the represented person, and has the same effect as if notice were given directly to that represented person.”
 - 15408(b):
 - (1) “The representative and the represented person shall not have a conflict of interest during the representation with respect to the particular matter that is the subject of the representation.”

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 - 15408(b):
 - (1) “The representative and the represented person shall not have a conflict of interest during the representation with respect to the particular matter that is the subject of the representation.”
 - (2) A settlor shall not represent and bind a beneficiary regarding the termination or modification of an irrevocable trust

Notices In Probate – Virtual Representation Is Here!

- *Consenting on behalf of another*

- Section 15804 is repealed and replaced with the following:

- 15408(c):

- (1) Consent must be in writing.
 - (2) Consent is binding unless the represented person objects before the consent would have become effective.
 - (3) Fiduciary who acts in reliance upon a representation made pursuant to this section is exculpated unless the fiduciary committed a breach of trust intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of a beneficiary.

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- 15408(d):

- An action taken by the court under this division is conclusive and binding upon a person represented pursuant to this section.

Notices In Probate – Virtual Representation Is Here!

- *Permissible Representations by Law*

- Section 15804 is repealed and replaced with the following:
 - 15408(e): Who can “represent and bind” whom?
 - (1) Parent → Minor and subsequently born children (if no GAL is appointed)
 - (2) Conservator of the Estate → Conservatee
 - (3) Guardian of the Estate → Ward
 - (4) GAL (with authority to act with respect to the matter) → Ward
 - (5) Agent under Power of Attorney (with authority to act with respect to the matter) → Principal
 - (6) Trustee → Beneficiaries
 - (7) Personal Representative → “Persons interest in the estate”
 - 15408(h): Holder of a lifetime/testamentary Power of Appointment → Appointees/Takers

Notices In Probate – Virtual Representation Is Here!

- *Bound by People with Substantially Identical Interests*
 - Section 15804 is repealed and replaced with the following:
 - 15408(f): Unless otherwise represented, the following people may be represented and bound by another person having a substantially identical interest with respect to the particular question or dispute:
 - *Minor*
 - *Incapacitated Person*
 - *Subsequently Born Person*
 - *Person whose Identity or Location is Unknown and Not Reasonable Ascertainable*

Notices In Probate – Virtual Representation Is Here!

- *Echoes of the Old Law*

- Section 15804 is repealed and replaced with the following:

- 15408(g): The following representation of successive interests is permissible:

- (1) *If an interest has been given to **persons who comprise a certain class upon the happening of a future event**, the living persons who would constitute the class as of the date the representation is to be determined may represent and bind all other members of the class as of that date.*
 - (2) *If an interest has been given to a **living person or to a class of persons**, and a **substantially identical interest is to pass to another person or class of persons, or both**, upon the happening of a future event, the living person or the living members of the class of persons who hold the interest may represent and bind all of the persons and classes of persons who might take on the happening of all future events.*
 - (3) *If an interest will be given to a **living person or to a class of persons upon the happening of a future event and a substantially identical interest would pass to another person or class of persons, or both**, upon the happening of one or more future events, the living person or the living members of the class of persons who will hold the interest on the happening of an earlier event may represent and bind all of the persons and classes of persons who might take on the happening of all future events.*

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Notices In Probate – Virtual Representation Is Here!

- *Carve Outs and Wide Applicability*
 - Section 15804 is repealed and replaced with the following:
 - 15408(i): This section does not affect either of the following:
 - (1) Requirements for notice in a court proceeding to any of the following:
 - (A) A person who has requested special notice.
 - (B) A person who has filed notice of appearance.
 - (C) A particular person or entity required by statute to be given notice.
 - (2) Availability of a guardian ad litem pursuant to Section 1003.
 - 15408(j): For purposes of this section, “notice” includes other papers.

A New Pathway For Small(er) Estates

- Amendments to Sections 13100, 13101, 13150, 13151, 13152, and 13154 of the Probate Code (and) Section 13158 is repealed
 - 13151(a): A decedent's "primary residence" valued at \$750,000 may be transferred by summary petition and without formal probate.
 - 13100: The value of such a "primary residence" is not included in the threshold for a small estate affidavit (currently \$208,850 as of 4/1/2025).
- Timing and notice considerations:
 - 13151(a):
 - Prior to filing petition, **40 days must have elapsed** since the death of the decedent
 - Notice must be **delivered to each heir and devisee** within **five (5) business days of filing**

Timing Of Record Notice For Real Property Transactions

- AB 2004 (2023-24) – Notice to purchasers
 - In 2023, California authorized remote notarization.
 - Then, last year, Civil Code section 1207 was amended such that an instrument affecting title real property “imparts notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate” **90 days after it has been copied into the property book of record, rather than one year after.**

Kasem-Nichols-Rooney: Notice In Protective Proceedings

- SB 1106 – Notice requirements for moving conservatees/death of conservatee
 - Who is entitled to special notice of relocation of conservatee/ward or death of conservatee?
 - Section 2700(a)(1) – the following people may file a request for special notice in person or by attorney:
 - Ward (if over 14)
 - Conservatee
 - Spouse/domestic partner of conservatee
 - “Any relative or creditor” of the ward/conservatee
 - “Any other interested person” – pursuant to Section (a)(2), this may “include, but is not limited to” a family member not otherwise entitled to notice under Section 1460 or a “friend of the conservatee.”
 - Section 2700(b): “Request for Special Notice” shall have had that title and shall set forth name of the person and address to which notices shall be delivered.

Kasem-Nichols-Rooney: Notice In Protective Proceedings

- SB 1106 – Notice requirements for moving conservatees/death of conservatee
 - Who is entitled to special notice of relocation of conservatee/ward or death of conservatee?
 - Section 2700(c): Special notice may be requested for any of the following:
 - (1) Petitions filed in the guardianship or conservatorship proceeding.
 - (2) Inventories and appraisals of property in the estate, including any supplemental inventories and appraisals.
 - (3) Accounts of the guardian or conservator.
 - (4) Proceedings for the final termination of the guardianship or conservatorship proceeding.
 - Section 2700(d)(2): You can get the catch all by referring generally to “the matters described in subdivision (c) of Section 2700 of the Probate Code”

Kasem-Nichols-Rooney: Notice In Protective Proceedings

- SB 1106 – Notice requirements for moving conservatees/death of conservatee
 - Amended Section 2352(e) – removal from residence
 - (1) Guardian/conservator shall file a notice of change of residence within 30 days of the change.
 - (2) Notice shall be delivered to all persons entitled to notice under guardianship/conservatorship statutes (and persons entitled to special notice under section 2700), except that court may waive the delivery requirement for good cause
 - (3) Guardian/conservator who proposed to remove a ward/conservatee from **current residence or personal residence**, notice shall be delivered at least 15 days before removal for ward, or 20 day before removal for conservatee, except in case of emergency, at which point the guardian/conservator shall set forth the basis for the emergency in the notice.

Kasem-Nichols-Rooney: Notice In Protective Proceedings

- SB 1106 – Notice requirements for moving conservatees/death of conservatee
 - Amended Section 2361 – Notice of Conservatee's Death
 - (a) Notice of Conservatee's Death
 - Shall be provided to:
 - all persons entitled to notice under Section 1460
 - persons who have requested special notice under Section 2700
 - Proof shall be filed with Court
 - (b) Funeral Arrangements
 - Conservator shall provide notice of any funeral, burial, or memorial arrangements, if the conservator makes such arrangements
 - Notice shall be delivered electronically whenever possible.

Statutes Of Limitation – Promises To Make a Testamentary Disposition

- *Smith v. Myers, 103 Cal.App.5th 586, 323 Cal.Rptr.3d 157 (June 27, 2024)*
- Holding: One-year statute of limitations under Probate Code section 366.3 pertaining to claims arising from a decedent's promise to distribute does not apply to claims for distribution under a valid trust amendment.
- Code of Civil Procedure Section 366.3:
"If a person has a claim that arises from a promise or agreement with a decedent to distribution from an estate or trust or under another instrument, whether the promise or agreement was made orally or in writing, an action to enforce the claim to distribution may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply."

Statutes Of Limitation – Promises To Make a Testamentary Disposition

- *Smith v. Myers, 103 Cal.App.5th 586, 323 Cal.Rptr.3d 157 (June 27, 2024)*
 - Facts:
 - 1992 – Decedent gave daughter, Kathleen, a 45.8% share of his ranch in his life following the passing of his wife.
 - 1999 – Decedent remarried
 - 2000 – Decedent left the remaining interest of the ranch to his new wife, Emma.
 - July 2016 – Decedent created a new amendment which would have left Kathleen and Kathleen's husband, Bruce, the remaining share of the Estate.
 - August 2016 – Decedent dies.
 - Emma maintained that this amendment was not valid.

Statutes Of Limitation – Promises To Make a Testamentary Disposition

- *Smith v. Myers, 103 Cal.App.5th 586, 323 Cal.Rptr.3d 157 (June 27, 2024)*
 - Procedural Posture:
 - 2020 (four years after death) – Kathleen and Bruce file a petition to confirm the validity of the amendment and to remove Emma as Trustee of the Trust.
 - Emma files a demurrer as to Bruce’s claim specifically saying that he “failed to file his claim that the decedent left him a testamentary gift through a trust amendment within one year of the decedent’s death,” was time barred from seeking the requested order under Probate Code section 366.3.
 - The Probate Court denied the motion and confirmed the validity of the amendment favoring Kathleen and Bruce.
 - Emma appealed.

Statutes Of Limitation – Promises To Make a Testamentary Disposition

- **Smith v. Myers, 103 Cal.App.5th 586, 323 Cal.Rptr.3d 157 (June 27, 2024)**
- Result:
- Affirmed.
- Section 366.3 applies to claims that arise from promises or agreements by a decedent for distribution from an estate, trust, or other instrument.
 - The word “promise” means “a declaration that one will do or refrain from doing something specified,” “a legally binding declaration that gives the person to whom it is made a right to expect or to claim the performance or forbearance of a specified act,” or “[a] reason to expect something.” (Merriam-Webster's Collegiate Dict. (11th ed. 2003) p. 994, col. 1.)
 - The word “agreement” means, “the act or fact of agreeing,” “harmony of opinion, action, or character,” “an arrangement as to a course of action,” “a contract duly executed and legally binding,” or “the language or instrument embodying such a contract.” (Merriam-Webster's Collegiate Dict. (11th ed. 2003) p. 26, col. 1.)
- This action was not based on a “promise,” “agreement,” or “contract” that bound Ernest.
- As such, 366.3 did not apply.

Statutes Of Limitation – Contests

- **Packard v. Packard (2025) 108 Cal.App.5th 1284**
- **Facts:**
 - 2010 – Trust was established by Newton. Trust contained a no-contest clause.
 - 2012 – Trust was amended -- provided Greg with trustor's residence and Scott with an equalization payment and then the residue was divided.
 - 2014 – Newton appears to have written "one-half" with his initials onto the amendment, which would appear to cause Scott to receive only one-half of the equalization payment.
 - 2020 – Newton dies.
 - August 2020 – Greg sends out 16061.7 notice.
 - More than four months later, Scott sends a letter agreeing to the appraised value of the residence.
- **Procedural Posture:**
 - May 2022 -- Scott files his petition to reform the first amendment based on idea that the interlineation was to ensure that Greg and Scott received equal distributions from the trust.
 - Greg files motion for judgment on the pleadings based on 16061.8, which the trial court grants.
 - Scott appeals.

Statutes Of Limitation – Contests

- **Packard v. Packard (2025) 108 Cal.App.5th 1284**
- Holding: Petition to reform a trust based on mistake did not constitute a challenge to the trust and, therefore, was not subject to the 120-day Statute of Limitations as set forth in Probate Code section 16061.8.
- Probate Code Section 16061.8:

“A person upon whom the notification by the trustee is served pursuant to paragraph (1) of subdivision (a) of Section 16061.7, whether the notice is served on the person within or after the time period set forth in subdivision (f) of Section 16061.7, shall not bring an action to contest the trust more than 120 days from the date the notification by the trustee is served upon the person, or 60 days from the date on which a copy of the terms of the trust is delivered pursuant to Section 1215 to the person during that 120-day period, whichever is later.”

Statutes Of Limitation – Contests

- **Packard v. Packard (2025) 108 Cal.App.5th 1284**

- Result:

- Reversed and remanded.
- Scott's contention was that the probate court erred in finding that his petition constituted a trust contest subject to the 120-day statute of limitations period set forth in Probate Code section 16061.7.
- Court of Appeal reversed concluded that Scott's petition was one to reform the trust to correct an alleged mistake in the trustor's expression of his intent, rather than a trust contest, and it was therefore not subject to the 120-day statute of limitations period.

- Reasoning:

- Disputes over interpretation are not usually treated as violating a no contest clause.
- Purpose of reformation is to carry out the wishes of the testator, and a beneficiary may petition the probate court to reform a trust that, due to a mistake, does not accurately reflect intent.
- Where there is no question as to the validity of a trust, but rather the intent is to determine and implement intent, it's not a contest.
- Here, Scott was seeking to interpret the instrument, not contest it.
- The Court was not making a determination as to whether there was actually a mistake supporting reformation, but it should not have been dismissed at the pleading stage.

Demurrers In Probate

- **Goebner v. Superior Court (2025) 110 Cal. App. 5th 1105**
- Holding: A demurrer may be filed at any time at or before the initial hearing date in a probate case.
- Pertinent Statutes:
 - Code of Civil Procedure Section 430.40: Demurrer must be filed 30 days after service.
 - Probate Code Section 1043: Objection or response may be made at or before probate hearing.
 - Probate Code Section 1000: Code of Civil Procedure applies except where Probate Code provides applicable rules

Demurrers In Probate

- **Goebner v. Superior Court (2025) 110 Cal. App. 5th 1105**

- Facts/Procedural Posture:

- McDonald filed a petition to invalidate the trust, compel the trustee to provide an accounting, and to remove and replace the trustee.
 - Notice of hearing provided on same day as filing.
 - Two days prior to the hearing, Goebner filed a demurrer seeking to dismiss McDonald's claim.
 - Trial court overruled the demurrer as untimely under California Code of Civil Procedure section 430.40.
 - Goebner sought a writ of mandate, arguing the ruling arguing that Probate Code section 1043 allows objection or response at or before a probate hearing.

Demurrers In Probate

- **Goebner v. Superior Court (2025) 110 Cal. App. 5th 1105**

- Result: Court of Appeal held that Probate Code 1043 controlled and issued the writ of mandate.
- Reasoning:
 - While Probate Code section 1000 does state that the California Code of Civil procedure does apply to proceedings under the probate code except where the probate code provides applicable rules, the plain language of Probate Code section 1043 is specific as to the timing for an interested person to file a response or make an objection and is the applicable rule in this matter.
 - The court determined that demurrer is a type of objection and, therefore, Probate Code section 1043 is applicable in this instance.

Demurrers In Probate

- **Goebner v. Superior Court (2025) 110 Cal. App. 5th 1105**
 - Some Interesting Notes:
 - McDonald argued that because this was a contest, Probate Code Section 8251 (which prescribes a different procedure for will contests), should apply.
 - However, McDonald failed to grapple with Section 1040, which provides that Division 3, Part 3 (where Section 1043), except where the statute provides a different procedure.
 - Probate Code section 8251 pertains to will contests, not trust contests.
 - McDonald also argued that it is absurd to allow an interested party to file a demurrer at any time before a hearing and that 1043 must include summary judgments.
 - However, there is no procedure in the Probate Code concerning MSJ's, and therefore the CCP applies.
 - McDonald also argued that the interpretation undermines the meet and confer requirement under the CCP
 - The Court of Appeal ruled that parties should meet and confer at least five days before the probate hearing date.
 - However, the court did not have occasion to address how the automatic 30-day extension of time for demurrers where the parties are unable to meet and confer, so that question is left open.

Discovery – Initial Disclosures (In Civil Actions)

- Section 2016.090 – Initial Disclosures (Not Applicable To Probate Code Proceedings, But Does Apply To Civil Proceedings)
 - Section 2016.090(a):
 - (1) Party can demand that an initial disclosure be made within 60 days by all parties, including the party making the demand, to all parties regarding:
 - (a) Names, addresses, telephone numbers, and email addresses of all persons likely to have discoverable information, along with the subjects of that information (subject to a few exceptions)
 - (b) Copies, or descriptions by category and location, of all documents, electronically stored information, and tangible things that the disclosing party has in possession, custody, or control...
 - (c),(d) Insurance/indemnification agreements
 - (2) Initial disclosures shall be made based on information reasonably available. The following are not excuses:
 - case is not fully investigated
 - other party's disclosures are insufficient
 - other party has not made disclosures

Discovery – Initial Disclosures (In Civil Actions)

- Section 2016.090 – Initial Disclosures (Not Applicable To Probate Code Proceedings, But Does Apply To Civil Proceedings)
 - Section 2016.090(a):
 - (3) Supplemental demands may be made twice before trial is set and once after trial is set, unless Court allows for more supplemental demands based on good cause.
 - (4) Motions to compel may be made by court on its own motion or by a party.
 - (5) Disclosures shall either be verified by party or signed by counsel.

Summary Judgment Motions

- Summary Judgment Motions (AB 2049)
- Changes to Code of Civil Procedure 437c
 - When must summary judgment motions be filed:
 - Previous Law: 75 days before hearing on motion (and set no less than 30 days before trial)
 - New Law: **81 days before hearing**
 - Oppositions?
 - Previous Law: 14 days before hearing
 - New Law: **20 days before hearing**
 - Replies:
 - Previous Law: 5 days before hearing
 - **New Law: 11 days before hearing**
 - Why? Judges and lawyers lobbied that courts should have more time to evaluate these motions when they are fully briefed.