The California Probate Paralegal

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Carolina Academic Press
Durham, North Carolina

Library of Congress Cataloging-in-Publication Data

Noyes, Dianna L.
The California probate paralegal / by Dianna L. Noyes.
p. cm.
Includes bibliographical references and index.
ISBN 13: 978-1-59460-409-6 ISBN 10: 1-59460-409-6 (alk. paper)
1. Probate law and practice--California--Popular works. 2. Executors and administrators--California--Popular works. 3. Legal assistants--California--Handbooks, manuals, etc. I. Title.

KFC205.Z9N69 2007
346.79405'2--dc22

2007013141

Carolina Academic Press
700 Kent Street
Durham, NC 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

I would like to take this opportunity to thank
the numerous individuals who have helped me with this book
and with *The California Family Law Paralegal* first published in 2006.
Due to the pressures of deadlines and numerous other factors,
I neglected to acknowledge that these projects
would never have happened if not for the incredible support
and encouragement that I received over the past three years.

Thank you to Ann Birkhaus, CLA who edited both textbooks.
Ann is a great editor and paralegal and I am eternally indebted to her for
her contribution to my work. Victoria Newman, RP
also assisted with editing and particularly with content.
Vickie, like me, has worked in the areas of family law,
estate planning and probate for many years.

Thank you to Barbara Gerletti for encouraging me to teach,
write these books and setting me on the educational path.

Thank you to John M. Angerer
for providing a fertile training ground,
your friendship, inspiration.

A huge thank you to my parents and family
for their encouragement and incredible support
in every way imaginable.

Thank you to Craig and Eric Brookey
for helping me with printing and technology expertise.

Last, but definitely not least,
thank you to my two best friends,
Carol Parker-Schafer and Barbara Lee-Willard.
Your friendship, encouragement,
and inspiration keep me going every day.

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Introduction

Probate and estate planning is an area of the law that affects almost every individual. You cannot say that about most other areas of law. Most of us will go through life without being sued or having to sue anyone. Some, but not all, of us will come into contact with the family court either through divorce or a child custody matter. The vast majority of us, however, will have a family member who has died or will die. Moreover, we will all eventually die and need to have our property passed on to our heirs.

From a personal perspective, each of you should learn something of value from this text that will be useful in your own life. One of the most important personal insights you should gain is that each of us needs to plan for our own death or possible incapacity. From a professional perspective, as a paralegal, I hope you will find this area of law interesting and challenging.

This book will cover the various types of documents a paralegal might be involved in drafting in a typical probate and estate planning practice. Such documents include, but are not limited to, Wills, Trusts, Powers of Attorney, and Advance Health Care Directives. As a paralegal student or entry level paralegal, you will become familiar with the various forms of complex estate planning such as revocable and irrevocable trusts and the many documents that accompany such estate planning techniques. The paralegal student will also learn the various mechanisms for transferring property upon death with and without probate administration.

The text provides practical applications to the basic probate process by providing samples of completed Judicial Council forms required by the California courts. Practical skills, terminology, and discussions of various "real world" applications are provided to assist the paralegal in developing knowledge and skills. Concepts will be discussed. Examples and assignments will be provided so that the student will have a better understanding of how the concept is applied in the legal environment. The student will also learn how to properly manage files and documents, as well as keep accurate timelines and calendar deadlines that are critical to the probate process.

Probate also covers the areas of guardianship and conservatorship. These topics will also be addressed in this text as they are governed, for the most part, by the California Probate Code. In most California Counties, these cases are heard within the probate court system.

There is much terminology utilized in this area of practice, which will be a primary focus of the text. The book is written in a logical manner and therefore terminology will be included as it applies to a particular section. The Glossary at the end of the book will also contain the definitions found in the various chapters, as well as many other definitions and will be in alphabetical order.

This book is written for the paralegal student and entry level paralegal. There are many complex estate planning and probate issues that will not be addressed in this text. Such issues are best learned through advanced seminars and hands-on experience in the law office environment. However, with the basic knowledge and understanding of the topics presented in this book, a paralegal will be ready to take on more complex matters as they become more experienced and knowledgeable.

Probate and estate planning are constantly changing. One of the most recent changes in California is to include Registered Domestic Partners within most of the probate code sections particularly as they relate to the transfer of property held by two persons who have registered with the State of California as Domestic Partners. Additionally, both state and federal tax laws may also affect the transfer of property as well as whether the decedent's estate will incur any taxes. These topics will be addressed so that the paralegal has a basic knowledge of how these issues relate to the estate administration process.

Depending upon the complexity of the estate, it may take several years to bring the matter to a conclusion and make a final distribution. Clients and attorneys find that paralegals will be able to keep track of the various statutes, local rules, time-lines, and details throughout this often-lengthy period. The paralegal will be able to continue to work on the administrative tasks, while the attorney can continue to secure new clients, attend hearings, as well as work on complex matters requiring his or her expertise.

A probate and estate planning paralegal will find this work very interesting and rewarding. Some students will take quickly to this area of practice, while others will want to get as far away from it as possible. The probate paralegal must be able to be empathetic while remaining detail-oriented. An organized paralegal with excellent communication and writing skills will excel in this area of practice. Probate and estate administration are well suited to paralegal skills and will reduce the costs to the client.

A probate paralegal should be a able to work well with clients as well as be able to work well with the legal team. He or she should also be able to work well with appraisers, actuaries, accountants, and others who will be providing services related to the client's finances.

A paralegal working in this area of practice should have a good basic knowledge of finances. Many of the tasks and information acquired will relate to the client's assets. A working knowledge of valuations, appraisals, taxes and other financial areas are a plus. It is not imperative to be an accountant, but it certainly is a benefit to know how to prepare a balance sheet, what is profit or gain, and what is a loss.

This area of practice is "people-oriented." Often a client will come to the office as a result of a traumatic experience, such as the death of a family member. The client will want someone who shows empathy, understanding, and sincerity. Planning for one's own death or incapacity is also difficult for most people. The paralegal will often be the client's link to the firm as the case progresses. The client often comes to ask to speak with the paralegal each time he or she calls. Clients will rely greatly on the paralegal, not only for his or her procedural knowledge and for expertise, but because they feel, they have built a relationship with the paralegal. A wise paralegal will take care that the client does not become too attached to him or her. The paralegal must also make sure not to give advice to the client and commit the Unauthorized Practice of Law (UPL). This is often a very fine line. The paralegal will also need to take care that the client does not monopolize his or her time. As the paralegal comes to know the client and the client finds the paralegal to be kind and empathetic, he or she may call the office constantly. There will be times that the paralegal will have to diplomatically let the client know that he or she cannot spend time conversing with the client. Probate and estate planning clients often are not paying an hourly rate and therefore do not see the cost of the time being spent on the matter. In the event it becomes a problem, the attorney needs to be advised of the situation.

Probate and estate planning are interesting and challenging. There are many other types of laws that interact with this area of practice. A paralegal working in this area of law will come into contact with various business entities, contracts, family law issues, finances, and taxes. There may even be some civil issues that relate, if for example, a decedent died in an automobile accident caused by another person, or died at work as the result of an industrial accident. Rarely are two estates exactly the same. This area of law is multi-faceted and can be very rewarding for a paralegal choosing to work in this field of the profession.

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