

The Love Affair is Over

What ProFids need to know

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Discussion

RISE OF PROFIDS
ENAMORING OF PROFIDS
LESSONS BURNED
NOW WHAT

The Rise of the ProFid

The Professional Fiduciaries Bureau in California was established in 2006, and became effective on January 1, 2007. This was when Senate Bill 1550 was signed into law by then Governor Arnold Schwarzenegger.

The Bureau's mandate is to license and regulate non-family member private fiduciaries, including conservators, guardians, trustees, personal representative of a decedent's estate, and agents under durable powers of attorney as defined by the Professional Fiduciaries Act.

Everyone Was in Love

ProFids were appointed in contested cases from the bench with little to no resistance by any party.

Cases were largely handled well and much deference was given to ProFid's requests as they were learning and going with the flow.

ProFids were newer to the scene and not as busy or jaded.



JUDGES AND COURTS



ATTORNEYS



PARTIES



OTHERS

Nearly 20 Years Later:

- Courts have changed
 - Was localized with district courts (e.g., LA had probate courts in Santa Monica, Van Nuys, Malibu, Compton, Norwalk, Long Beach, etc.)
 - Now centralized with a singular probate court in most counties
 - Judges that embraced ProFids have retired; now new judges and staff throughout
 - Theme of courts NOW: follow the law or else
- California Probate Code largely the same
 - Some new changes to small estate thresholds including new AB2016
 - Probate procedure has not changed, not one iota!
- Attorneys are the same
 - Represent many ProFids continuously
 - Have institutional knowledge now
 - Trusts and estates overall is booming and will get "boomier" (busier) as Baby Boomers age

Some Bad Apples:

- Media has questioned ProFids
 - Various media exposés
 - A notable exposé in 2005 by the Los Angeles Times lead to fiduciary regulation
- Found some bad apples
 - Even locally!
- Overall, most are honorable and well intentioned

Average ProFid Active Case Load:

- Tend to get appointed in problem cases by the courts
- Tend to get nominated in problem cases by individuals
 - Prickly family relationships
 - No family relationships
 - Eccentric personalities
- Average after a non-scientific poll is 42 active cases per fiduciary in about 5 years of practice
 - Longer years of practice yields more as many are in stagnant stage, wrapped up stage or in the "reserve" stage

Your Attorney Knows More Than You Think

- Institutional knowledge
 - Firms have experience with hundreds of cases over firm lifetimes
 - Solos and small firm attorneys have years of experience
- Attorneys can see and notice trends with clients and courts
 - Handle *routine administrations with laypersons* while ProFids tend to get difficult ones
 - Attorneys have multiple ProFid representations and cases

	2020	2021	2022	2023	2024
Trust Administration	190	236	248	221	218
Conservatorship	13	26	19	29	27
Probate	63	74	67	84	85
Trust Litigation	79	67	74	66	76

TLD Low New
Cases Per
Year Per Type
~400 per year

Does not
include on-
going cases

Know This

The practice in trust and estate administration is largely governed by the California Probate Code and is very deadline dependent. These deadlines are important and must be honored each time.

Your counsel handles routine administration without contest day in and day out from laypersons.

Those clients/laypersons follow the advice that we dispense to the ProFids without any issues.

ProFids are largely ignoring expert legal advice causing a commotion.

Time to get back on track.

Lessons Burned

**But first:
ProFids are to remain a
neutral in their cases**

Key CA Probate Code Administration Timelines

From issuance of letters or acceptance as successor trustee, the goal is to handle the death administration and file a final petition either of the following time periods:

12 months if a federal estate tax return **is not** required

18 months if a federal estate tax return **is** required
(CA Probate Code § 12200)

Inventory and Appraisal must be filed within 4 months of issuance of letters

You can file partials, but the final IA must be filed by this deadline

Same for the reporting for Death of Real Property Owner form for the appropriate county assessor offices for real property interests

(CA Probate Code § 8800)

Probate Tasks and Deadlines:

- Inventory and Appraisal must be filed within 4 months of issuance of letters
 - CA Probate Code Section 8800
 - You can file partials, but the final IA must be filed by this deadline
 - Same for the reporting for Death of Real Property Owner form for the appropriate county assessor offices for real property interests

Trust Admin Tasks and Demands:

- Trust administrations by ProFids are more likely to be contested
 - Appointed due to contested nature at death
 - Nominated since settlor was already concerned
- Demands for a trust accounting must be honored whether derived from a beneficiary directly or their counsel
 - A trustee typically has 60 days to respond to a beneficiary's demand for an accounting; this means they must provide a complete accounting within 60 days of receiving the request (CA Probate Code Section 17200(b)(7))
- Timelines for trust administration due to the death should mirror the 12 to 18 month rule for probates

Court-set OSCs

- OSC is an Order to Show Cause
- It's a hearing to explain why something was not done on time or by court order
- It's not a file by deadline
- It should be honored and your attorney needs time to review, prepare and file

- **Need to have filings ready**
- **Including all bank statements where appropriate for type of case**
- **Need to have your fees ready plus your declarations in support**
- **Your attorney has calendared these deadlines**
- **Reminders are important and are given, ProFids must heed**

Probate Court Tools:

- Tolling Agreements for SOL, trust contest periods, etc.
- Notice of Proposed Action
 - Timeline varies for probate versus trust types
 - Objections require going to court
- Petition for Instructions
- Petition for Approval of Accounting
- Petition for Approval of ProFid Fees, Attorney Fees
- Agreements and Stipulations with Parties, Counsel, etc.
- Notice of Entry of Judgement/Order

Wrap up/Discussion and Questions:

- Courts used to give lee-way to requesting continuances by emailing the “probate examiner”
 - This is no longer the case
 - New judges and staff are following the rules set by the CA Probate Code
 - We should oblige
- Deadlines, file by dates, OSC dates must be honored
- ProFids must use their teams of financial planners, CPAs and attorneys to get cases lined up and all requests done in a timely manner and make meeting deadlines a priority going forward

Thank you!

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