

WILL CONTEST

Whenever some interested party wants to challenge the filing of a Petition for Probate of a Will, that person must file a petition stating the grounds for the contest and have a Summons (Probate) issued. The Summons and petition, which is usually entitled "Will Contest and Objections to Probate", must be served on each named executor, heir, etc. The Summons directs each such person to respond within 30 days after service. A person named as executor, but not yet appointed, is not required to defend such a contest. Service can be made by mail or can be done in person. The person filing the will contest is called the Objector. Sometimes, in the caption of the will contest, the objector is termed the plaintiff and the petitioner (on the original probate petition) is deemed the defendant.

The original petitioner, and any other person, can join or separately answer the Will Contest, or demur. A demurrer, which is a legal term for certain deficiencies in a petition, can be made on the same grounds that are available in a civil actions.

If no response is filed by the original petitioner, the case is still at issue as to the will contest and may proceed to a hearing or trial. No jury is allowed in will contests (PC 7200). The proponents of the Will have the burden of proof that the Will was duly executed. The contestants have the burden of proof that the decedent lacked testamentary intent or capacity to make a Will, or that undue influence, fraud, duress, or mistake was involved, or that the Will was revoked prior to death. If the grounds of contest are that a later Will revoked a prior Will, the later Will must first be determined to be entitled to probate.

Evidence of due execution of the Will must be presented at the trial or hearing. Each subscribing witness must be examined. If none is available, other witnesses may be used to prove due execution.

The Court can admit the Will in whole or part, or reject it in whole or in part.

REVOCATION OF PROBATE

Once a Will is admitted to probate, or an administrator is appointed, any interested person may file a petition to revoke probate. Such a petition must be filed within 120 days after a Will has been admitted to probate.

Who can file a petition for revocation of probate? Only someone who was not a party to a previous will contest (and presumably lost!). Also, such a petition cannot be filed by someone who had notice of a previous will contest and could have joined in that contest, but who chose not to participate. The only exception to this is for minors or incompetents who did not have a guardian or conservator at the time the Will was admitted. Such persons can petition to revoke the probate through their respective guardians or conservators.

The court clerk issues a Summons (Probate) when a petition is filed. The Summons is directed to the personal rep. and the other heirs/devisees, telling them to respond within 30 days. Failure to respond merely precludes the respondent(s) from further participation in the proceeding, but doesn't affect the heirs' interest in the estate otherwise. Also, the case is still at issue and can proceed to hearing or trial.

If the judge revokes probate, it terminates the personal representative's powers, but it does not void any act previously done if the act was done in good faith. Again, there is no right to jury trial.

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES, SOUTHEAST DISTRICT**
10

11 Estate of:) CASE NO. VP 123456
12 I. M. DECEASED,)
13 Deceased.) WILL CONTEST AND OBJECTIONS TO
OB JEKTER,) PETITION FOR PROBATE OF WILL
14 Objector,)
15 vs.)
16 I. L. GETRICH,) DATE: 2/1/08
17 Respondent.) DEPT. A
TIME: 8:30 a.m.

18 Objector, Ob Jekter, alleges:

19 1. Decedent died on 11/30/99, a resident of Los Angeles
20 County.

21 2. On or about January 2, 2000, respondent filed with this
22 court a petition to probate the last will and testament of the
23 decedent. Said purported will leaves all of the decedent's estate
24 to the respondent.

25 3. Objector is an interested person entitled to contest the
26 admission of the purported will in that objector is the sole
27 surviving heir of the decedent (brother of decedent).

28 4. Probate of the purported will should be denied because

1 the will was made as a direct result of undue influence exercised
2 by respondent over decedent and is not, and never was, the will of
3 the decedent. At the time of his death, a confidential
4 relationship existed between the decedent and respondent. Decedent
5 was a 73 year old man and suffered from heart disease and lung
6 cancer. Because of his weakened condition, respondent, a neighbor,
7 gained his confidence and easily influenced decedent to leave all
8 of his estate to respondent. Respondent is unrelated to the
9 decedent, while objector is decedent's brother and only natural
10 heir.

11 5. On the day that decedent signed his will, respondent
12 brought the previously prepared document to decedent's house and
13 invited two friends of respondent to act as witnesses. Respondent
14 told decedent that the will would leave everything to objector,
15 when in fact it devised everything to respondent.

16 WHEREFORE, Objector prays as follows:

- 17 1. That the purported will of decedent be denied probate;
- 18 2. That respondent's request for Letters Testamentary be
19 denied;
- 20 3. For costs of suit; and
- 21 4. For such other relief as the court deems proper.

22 Dated: 1/05/08

23

OB JEKTER

24

25 I declare under penalty of perjury that the foregoing is true
26 and correct. Executed on January 5, 2008, at Lakewood, CA.

27

28

OB JEKTER

SUMMONS (CITACION JUDICIAL)

PROBATE (JUICIO TESTAMENTARIO)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO: (Aviso a) I.L. GETRICH

FROM: (De) OB JEKTER

ESTATE OF: (Herencia de) I. M. DECEASED,

<p>A court proceeding has been started which may affect your interests in the estate. Read the document delivered with this <i>Summons</i>.</p> <p>You have 30 CALENDAR DAYS after this summons is served on you to file at this court a typewritten response if you want to be heard by the court.</p> <p>A letter or phone call will not protect you. Your typewritten response must be in proper legal form if you want the court to consider it.</p> <p>If you do not file your response on time, you may lose your right to participate in the proceeding or present your evidence. You will not receive another warning from the court.</p> <p>There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book.)</p>	<p><i>La corte ha comenzado a tramitar una acción judicial testamentaria que puede afectar sus intereses sucesorios. Lea el documento enviado con esta citación judicial.</i></p> <p><i>Después de que le entreguen esta citación usted tiene un plazo de 30 DIAS CALENDARIOS para presentar en esta corte una respuesta escrita a máquina, si desea una audiencia ante la corte.</i></p> <p><i>Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte considere su caso.</i></p> <p><i>Si usted no presenta su respuesta a tiempo, puede perder su derecho a participar en el proceso judicial o a presentar sus pruebas. Usted no recibirá notificación adicional por parte de la corte.</i></p> <p><i>Existen otros requisitos legales. Es posible que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).</i></p>
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The name and address of the COURT is: (El nombre y dirección de la CORTE es)
SUPERIOR COURT OF THE COUNTY OF LOS ANGELES
12720 NORWALK BLVD.
NORWALK, CA 90650
SOUTHEAST DISTRICT

CASE NUMBER: (Número del caso)
VP 123456

The name, address, and telephone number of the filing party's attorney, or the party without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del accionante, o del accionante que no tiene abogado, es)

Alan D. Davis, #81783
Law Office of Alan D. Davis
1323 N. Broadway
Santa Ana, CA 92706

(714) 614-0422

DATE: _____ Clerk, by _____, Deputy
(Fecha) (Actuario) (Delegado)

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

a. as an individual.

b. on behalf of (specify):

under: Code Civ. Proc., § 416.10 (corporation) Code Civ. Proc., § 416.60 (minor)

Code Civ. Proc., § 416.20 (defunct corporation) Code Civ. Proc., § 416.70 (conservatee)

Code Civ. Proc., § 416.40 (association or partnership) Code Civ. Proc., § 416.90 (individual)

other (specify): _____

c. by personal delivery on (date): _____

(Proof of Service on reverse)

ESTATE OF (Name): I. M. DECEASED,	CASE NUMBER:
DECEDENT	VP 123456

PROOF OF SERVICE

1. At the time of service I was at least 18 years of age and not a party to this action, and I served copies of the (specify documents):

2. a. Party served (specify name of party as shown on the documents served):

b. Person served: party in item 2a other (specify name and title or relationship to the party named in item 2a):

c. Address:

3. I served the party named in item 2

a. by personally delivering the copies (1) on (date): _____ (2) at (time): _____

b. by leaving the copies with or in the presence of (name and title or relationship to person indicated in item 2b):

(1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person served. I informed him or her of the general nature of the papers.

(2) (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the person served. I informed him or her of the general nature of the papers.

(3) on (date): _____ (4) at (time): _____

(5) A declaration of diligence is attached. (Substituted service on natural person, minor, or conservatee, or candidate.)

c. by mailing the copies to the person served, addressed as shown in item 2c, by first-class mail, postage prepaid,

(1) on (date): _____ (2) from (city): _____

(3) with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed form.)

(4) to an address outside California with return receipt requested. (Attach completed form.)

d. by causing copies to be mailed. A declaration of mailing is attached.

e. other (specify other manner of service and authorizing code section):

4. The "Notice to the Person Served" (on the Summons) was completed as follows:

a. as an individual defendant.

b. as the person sued under the fictitious name of (specify):

c. on behalf of (specify):

under: Code Civ. Proc., § 416.10 (corporation)

Code Civ. Proc., § 416.20 (defunct corporation)

Code Civ. Proc., § 416.40 (association or partnership)

Code Civ. Proc., § 416.60 (minor)

Code Civ. Proc., § 416.70 (conservatee)

Code Civ. Proc., § 416.90 (individual)

other (specify):

5. Person serving (name, address, and telephone number):

a. Fee for service: \$

b. Not a registered California process server.

c. Exempt from registration under Business & Professions Code, § 22350(b).

d. Registered California process server.

(1) Employee or independent contractor.

(2) Registration No. (specify):

(3) County (specify):

(4) Expiration (date):

6. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date:

▶ _____
(SIGNATURE)