“Never a Final Judgment: Appealing Probate Court Orders”

Moderator:
Tyna Orren, Orren & Orren

Panelists:
Hon. John Segal, Second District Court of Appeal, Division Seven
Marc Sallus, Oldman, Cooley, Sallus, Birnberg, Coleman & Gold, LLP
Herb Fox, Law Offices of Herb Fox

Attendees:
Rashida Adams    Sarvenaz Bahar    Rachel Balchum
Leslie Barnett   Laura Brill       Douglas Collodel
Rudy Cosio       Dawn Cuchman      Russell Dalton
Kathleen Duke    Gregory Ellis     Gary Farwell
Dennis Fischer   Lisa Fisher       Ernestine Forrest
Robert Gerstein  Debra Graynom-Daly Lowell Green
Amber Haskett    Samuel Ingham     Mary Kelly
Robert Kern      Terri Keville    Jens Koepeke
Felix Leatherwood Robert Little    Mayo Makarczyk
Joanna McCallum  Christian Nagy   Mary O’Neill
Brad Pauley      Dan Persoff      Joseph Persoff
Phillip Putnam   Linda Retz       Alana Rotter
Julia Kushner Shear Diane Shim     John Stubbs
Julia Swanson    Michael Walsh    Roy Weatherup
Alan Weinfeld    Christina Wickers Mary Williams
Joseph Zimring

Tyna Orren introduced the panelists and moderated the discussion about why probate appeals are different.
Marc Sallus noted that “probate” work largely involves will contests, that it has limited, statutorily-defined jurisdiction, almost no jury trials, a relatively small community of dedicated probate attorneys, involves mostly transactional work but an increasing amount of litigation, and almost always has an official court reporter (at least in L.A. County).

Herb Fox explained that there are no judgments in probate court, only orders, which are made appealable by CCP section 904.1(a)(i)(10). The Probate Code, starting at section 1300, makes some 75 different orders appealable. However, if an order is really interim in nature, or has been superseded, it is not appealable.

Justice John Segal explained that his Division will routinely ask for all interim orders in the case to determine whether the order appealed from has become moot or non-justiciable. He noted that the most common probate appeals they see are trust appeals and second most typical are conservatorship appeals.

Sallus commented that some one-third of probate litigation involves section 850 claims, and that all trust orders are appealable if they are pursuant to section 17200.

Finally, Justice Segal cautioned probate appellate practitioners that once in the Court of Appeal, they should educate the justices and research attorneys in their briefs about the parameters of the subject area of probate law, because it is likely that the justices have had little or no experience with probate cases.

Approved on June 5, 2017

/s/
Jens B. Koepke, Secretary, Appellate Courts Section