



Court Trial or Bench Trial In Probate Court? Ask Probate Counsel

## Description

# Court Trial or Bench Trial in a Court of Equity?

There are no jury trials in living trust litigation. A probate court is a court of equity and not a court of law, therefore there is no right to trial by jury. Court trials or bench trials are regulated by California Code of Civil Procedure sections 607 and 631-636.

There are also other civil court trials in which the right to a jury has been waived by the parties and the court has approved a bench trial with no jury. Here is the link to the code pasted directly from the CCP:

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CHAPTER 5. TRIAL BY THE COURT ..... [631-636](#)

## Court Trials

Court trials begin as all trials with the plaintiff giving an opening statement. Be brief in any such plaintiff's opening argument. Speaking in court is a right and not a privilege so be brief and be seated, the court will not suffer fools rambling incoherently and off point in court. Your litigation paralegal will prepare notes from the case summaries you used in your expedited meet and confer summaries created to comply with the local probate rules.

## **Court trials and the defendant**

The defendant may reserve his opening statement until after plaintiff has presented its evidence.

## **In Court Trial the Petitioner Must Present His Evidence**

After defendant's opening statement, if any, in the court trial the plaintiff must then present his evidence. I am writing this article to remind me of what to in my upcoming court trial. The petitioners paralegal must gather the trial evidence.

In a living trust petition for breach of trust lack of evidence can actually be the evidence. The trustee has a duty to take detailed inventory and keep statutory records and accountings. The lack of documents from the trustee evidencing his record keeping work in favor of a petitioner claiming breach of fiduciary duty.

In nonjury trials opening and closing arguments are discretionary. Oral argument in a civil courtroom proceeding is a privilege and not a right. The right to opening and closing argument in court trial is accorded to the parties by the court in its discretion. By this point in your court trial your legal arguments should be well known and well documented in your pre-trial meet and confer communications. You began your trial preparation with your expedited case summaries required by the meet and confer statutes for pre-trial probate and living trust trials.

## **The Court Trial Paralegal**

Your esteemed jurist will of course know the Probate Code, as will opposing party. Your job as a living trust litigation paralegal will be to go to the main LA law library and pull annotated codes. Pull the Probate Codes cited as authority in your petition for breach of trust and breach of fiduciary duty. Look up those annotated codes on Westlaw. Find cases on point with your own. Use case law and the probate codes to state your case in the probate joint trial statement.

Trial court preparation began for me when I first thought of filing this living trust litigation. Trial preparation and litigation in general are a state of mind in which the whole process is grasped and held. The benefit of years of legal experience is the ability to holistically see the trial in the pre-litigation conceptualization of the living trust document and the petition for breach of living trust. The petition for breach of trust was drafted pursuant to the probate code and case law. Now those specific probate codes and cases must be further researched by me in the law library. That research will tell me where I need to go next in my case.

## **Trial Court Local Rules**

I also need to further research the Los Angeles Superior Court local probate rules on pre-trial meet and confer with opposing counsel with my expedited summaries. I need to get my codes and cases together into my argument soon. I need to research declarations. Impeachment of declarations. I need to research cross-examining a perjured declaration.

### **Category**

- Education

### **Tags**

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### **Author**

deanmcadams